ALBERTA
OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

Report of an Investigation into the Collection, Use and Disclosure of Personal Information

August 20, 2007

Hearing Conservation Consultants Ltd.
Investigation Report P2007-IR-005

and

Alberta Infrastructure and Transportation
Investigation Report F2007-IR-004
(Complaint F4116)

I. INTRODUCTION

[1] An individual ("the Complainant") submitted a complaint to the Information and Privacy Commissioner alleging that his former employer, Hearing Conservation Consultants Ltd. ("HCC" or "the Organization"), improperly disclosed his personal information to Alberta Infrastructure and Transportation's Driver Fitness and Monitoring Branch ("DFMB" or "the Public Body"). The Complainant maintained that the DFMB collected his personal information from his former employer without proper authority and then used it to place conditions on his driving privileges.

[2] In response to this complaint, the Information and Privacy Commissioner ("the Commissioner") elected to conduct an investigation to determine whether the Organization's activities represented a contravention of the *Personal Information Protection Act* ("PIPA"). The Commissioner also initiated an investigation to establish whether the conduct of the DFMB was in accordance with the *Freedom of Information and Protection of Privacy Act* ("FOIP").

II. JURISDICTION

[3] PIPA applies to provincially-regulated private sector organizations operating in Alberta, including HCC. PIPA sets out the provisions under which organizations may *collect, use*, or *disclose* personal information. The Commissioner has jurisdiction in this case because Hearing Conservation Consultants Ltd. is an "organization", as defined in section 1(i) of PIPA, and is

operating in Alberta. The information at issue, described below in paragraph 9, is also "personal information" as defined in section 1(k) of PIPA and 1(n) of FOIP.

[4] FOIP applies to "public bodies", defined in section 1(p)(i) to include "a department, branch or office of the Government of Alberta." Driver Fitness and Monitoring is a branch under the provincial department of Alberta Infrastructure and Transportation. As an office of the Government of Alberta, Alberta Infrastructure and Transportation is a public body under FOIP and the Commissioner has jurisdiction in this matter. Although Alberta Infrastructure and Transportation is the Public Body for the purposes of FOIP, for the sake of specificity, I will refer to the DFMB throughout this report. The purpose of FOIP is to regulate the manner in which public bodies collect, use and disclose personal information.

[5] Section 36(1) of PIPA and section 53(1)(a) of FOIP empower the Commissioner to conduct investigations to ensure compliance with any provision of each statute and make recommendations to organizations and public bodies regarding their obligations. In addition, under section 53(2)(e) of FOIP, the Commissioner may investigate and attempt to resolve complaints that personal information has been collected, used or disclosed by a public body in contravention of Part 2 of FOIP.

[6] The Commissioner authorized me to investigate and attempt to resolve this matter. This report represents my findings and recommendations, which may be made public according to section 38(6) of PIPA.

III. INVESTIGATION

[7] For the purposes of this investigation I spoke with the Complainant, the president of HCC, and the FOIP manager for Alberta Infrastructure and Transportation. I examined the complaint letter, Psychologist's letter, and letters the Complainant received from the DFMB. I requested that both the Organization and the Public Body provide a written response to the allegations with supporting documentation, which I reviewed. I also examined the DFMB's policies and information on Alberta Infrastructure and Transportation's website.

The Complaint

[8] The Complainant reported that he was involved in a serious motor vehicle accident in 2004 that caused post traumatic stress symptoms for which he received psychological treatment that continues intermittently to the present day. The Complainant's employment with HCC began afterwards in 2005 and involved a great deal of long distance driving. In 2006, he began experiencing some stress-related symptoms such as high blood pressure and blurred vision. At the time, the Complainant believed that these symptoms may have been a recurrence of those he experienced after his car accident. The Complainant's supervisor was not available, but after a discussion with a co-worker, the

Complainant and the colleague agreed that it would likely be best for the Complainant not to drive until his symptoms subsided.

[9] Since this decision affected the Complainant's ability to work, the next day he voluntarily submitted to HCC a letter from his Registered Psychologist that outlined the fact that the Complainant was "experiencing a recurrence of Post Traumatic Stress symptoms as well as symptoms of anxiety related to driving." The letter continued to detail the Complainant's personal information by describing symptoms the Complainant was suffering from: "high blood pressure, blurry vision, head activity [sic], nausea, initial insomnia, and high levels of hyper-vigilance". The letter also expressed the need for a medical leave and the Complainant provided it to his employer to support his request for time away from work. The Complainant then began his leave from work.

[10] While the Complainant was away from work, his employment with HCC was terminated. Several weeks later, a Reviewing Officer with the DFMB wrote to him on February 9, 2007 to notify him that:

> *The Driver Fitness and Monitoring Branch is in receipt of information which indicated you may have a medical and/or physical condition that could affect your ability to safely operate a motor vehicle.*

The Complainant was then required to submit a medical report to the DFMB from his physician, which he did. On April 20, 2007, the Reviewing Officer wrote to him again and advised that he had been approved to continue to operate a motor vehicle subject to an annual medical and psychological report.

[11] The Complainant claimed that his symptoms were later discovered to be caused by high blood pressure that is now being controlled. He stated his symptoms were found not to be a recurrence of post traumatic stress, so that unfair conditions were placed on his license to operate a motor vehicle as a result of someone's disclosure to the Public Body. He maintained that he "had never caused an accident in 27 years of driving" so he had a perfect driving record and "[does] not need this hassle." The Complainant took the view that only physicians are authorized to disclose information to the Driver Fitness and Monitoring Branch; similarly, the DFMB should only respond to reports from medical doctors.

[12] Since only the Psychologist and HCC were aware of the Complainant's circumstances, and the Psychologist denied providing this information to the DFMB, the Complainant asserted that his former employer must have disclosed the Psychologist's letter, or its contents, to the Public Body, contrary to PIPA. Because the letter was submitted for the purpose of his medical leave from employment, he alleged that HCC was not authorized to disclose the information for another purpose. The Complainant was also concerned that the DFMB collected his personal information in contravention of FOIP. He maintained that the DFMB did not have authority to collect his personal information from another source, or to use it to alter his driving privileges, unless received by a physician.

Hearing Conservation Consultants

[13] HCC is an industrial audiometric services company. It provides mobile hearing test facilities for on-site testing of employees of other organizations who are subject to occupational health and safety requirements.

[14] HCC confirmed that the Complainant's job entailed substantial long distance driving. Until it received the Psychologist's letter, the Organization reported that it had no knowledge of the Complainant's previous car accident or that he was receiving intermittent treatment for any residual health concerns. According to HCC, the Complainant took his medical leave in October of 2006 and his employment was ended shortly thereafter. Although HCC contacted the Psychologist, the Organization was unable to ascertain whether or not the Psychologist had reported the Complainant's condition to the DFMB.

[15] Given that the contents of the Psychologist's letter revealed symptoms that may have affected the Complainant's ability to drive, the Organization stated that out of concern for the safety of other drivers and in the public's interest, HCC wrote to the DFMB on January 5, 2007 to report the Complainant's condition. HCC's letter was brief and stated simply:

> [The Complainant] i*s no longer employed with our firm. He will not be returning. In the interests of public safety I am enclosing a letter from* [the Complainant's] *psychologist. The matter relates to safety issues and your department might be concerned.*

[16] HCC advised that it had authority to disclose the Complainant's personal information to the Public Body without his consent under section 20(c) of PIPA "which requires that this kind of information should be give [sic] to the issuers of driving licenses."

Driver Fitness & Monitoring Branch (Alberta Infrastructure & Transportation)

[17] Alberta Infrastructure and Transportation stated that the Driver Fitness and Monitoring Branch is a specialized area within the ministry where all Alberta driver records are monitored to ensure that driving privileges are maintained in accordance with the provisions of the *Criminal Code*, National Safety Code, national licensing agreements and relevant Alberta statutes and regulations. According to the Public Body:

> *The DFM is also responsible for enforcement programs related to operator licence suspensions, court imposed driving prohibitions, medical conditions, demerit points, criminal convictions, overdue traffic fines, motor vehicle accident judgements and administrative programs. These programs include establishing performance thresholds to identify high-risk drivers and ongoing monitoring and sanctioning of such drivers.*

[18] The Public Body reported that the DFMB is responsible for investigating any reports or complaints it receives and for making decisions related to driver fitness. It uses a Medical Review Committee to obtain advice on individual

medical conditions that could affect a person's ability to safely operate a motor vehicle and when it determines fitness to drive with respect to national medical guidelines.

[19] In the present case, Alberta Infrastructure and Transportation confirmed that the DFMB received a third party report about the Complainant and "acted on the information received in accordance with the authorizing legislation and established policies." The Public Body confirmed that it sent a letter to the Complainant advising that the DFMB had received information and requesting medical documentation to determine the Complainant's fitness to drive. The Complainant was later approved to continue to drive subject to annual medical and psychological reports.

[20] According to the Public Body, the DFMB has authority under FOIP and the *Traffic Safety Act* to collect and use the information received for the purposes of administering driver programs, and to ensure road safety, "including a law enforcement component." The DFMB is authorized to review individuals' driving privileges and assess their ability to safely operate a motor vehicle. Each complaint or report about an individual's ability to drive is considered on a case by case basis.

IV. ISSUES

[21] The Complainant did not object to the Organization's collection of the Psychologist's letter containing his personal information. In fact, he voluntarily obtained it and provided a copy to his employer knowing its contents. Thus, HCC's collection of the Complainant's personal information will not be examined here, and, since the Organization readily acknowledged that it disclosed the Psychologist's letter to the Pubic Body without consent, there is no need to consider whether consent was obtained. The issues to be determined in the remainder of this report are as follows:

(a) Did the Public Body have authority to collect the Complainant's personal information, in compliance with section 33 of FOIP?
(b) Was the Public Body authorized to collect the Complainant's personal information from a source other than the Complainant, in accordance with section 34 of FOIP?
(c) Did the Public Body have authority to use the Complainant's personal information, in compliance with section 39(1) of FOIP?
(d) Is the information disclosed by the Organization considered "personal information", pursuant to section 1(k) of PIPA, or "personal employee information" according to section 1(j) of PIPA?
(e) Did the Organization require the consent of the Complainant to disclose his personal information, according to 7(1)(d) of PIPA?
(f) Was the Organization's disclosure of the Complainant's personal information for purposes that are reasonable, in compliance with section 19(1) of PIPA?

V. ANALYSIS

(a) Did the Public Body have authority to collect the Complainant's personal information, in compliance with section 33 of FOIP?

[22] FOIP places a responsibility on public bodies to collect personal information only under certain conditions:

> *No personal information may be collected by or for a public body, unless*
> (a) *The collection of that information is expressly authorized by an enactment of Alberta or Canada*
> (b) *That information is collected for the purposes of law enforcement, or*
> (c) *That information relates directly to and is necessary for an operating program or activity of the public body* [section 33, FOIP].

[23] The Public Body argued that it collected the Complainant's personal information for law enforcement purposes, pursuant to section 33(b) of FOIP. The DFMB's activities were considered law enforcement since FOIP states that:

> *"law enforcement" means*
> *(i) policing, including criminal intelligence operations,*
> *(ii) a police, security or* ***administrative investigation, including the complaint giving rise to the investigation****, that leads or could lead to a penalty or sanction, including a penalty or sanction imposed by the body conducting the investigation or by another body to which the results of the investigation are referred, or*
> *iii)* ***proceedings that lead or could lead to a penalty or sanction, including a penalty or sanction imposed by the body*** *conducting the proceedings or by another body to which the results of the proceedings are referred* [emphasis added, section 1(h), FOIP].

In Order F2002-024, the Commissioner clarified this definition as follows:

> *For the purposes of the Act, "law enforcement" activities include the activities of a public body that are directed towards investigation, and enforcing compliance with standards and duties imposed by a statute or regulation: Order 96-006. An "investigation" has been defined as: "to follow up step by step by patient inquiry or observation; to trace or track; to examine and inquire into with care and accuracy; to find out by careful inquisition; examination; the taking of evidence; a legal inquiry": Order 96-019. Finally, for the purposes of the Act, an activity is "law enforcement" if it could lead to a penalty or sanction for the person in breach of the applicable law* [Order F2002-024, para 31].

[24] The DFMB maintained that it has delegated authority from the Registrar of Motor Vehicles under the *Traffic Safety Act* to - after investigating a complaint and collecting evidence such as medical reports - make decisions about a person's ability to operate a vehicle safely and impose "sanctions" such as an operator's licence being suspended or subject to certain conditions. The *Traffic Safety Act* enables the Registrar, or her designate, to disqualify an individual

from driving a motor vehicle where there are concerns about driver competency or ability:

> *The Registrar may disqualify a person from driving a motor vehicle in Alberta or cancel or suspend the certificate of registration issued for a person's motor vehicle, or both disqualify a person from driving a motor vehicle and cancel or suspend the certificate of registration issued for the person's motor vehicle,*
>
> *(a) if that person contravenes this Act or the Fuel Tax Act;*
> *(b) if the Registrar is not satisfied as to the competency of that person;*
> *(c) if the Registrar is satisfied that the person is not qualified or does not have the ability to operate a motor vehicle;*
> *(d) for any other reason appearing to the Registrar to be sufficient* [section 91(1), *Traffic Safety Act*].

The Registrar may also impose conditions to remove disqualification:

> *For the purpose of satisfying the Registrar as to a person's competency to drive a motor vehicle without endangering the safety of the general public, the Registrar may as a condition of removing the disqualification, suspension or cancellation referred to in subsection (1) require that person to do one or more of the following at any time before or after the removal of the disqualification, suspension or cancellation:*
>
> *(a) attend interviews conducted by or on behalf of the Registrar;*
> *(b) take and successfully complete training, educational or rehabilitation programs or courses as required by the Registrar;*
> *(c) provide to the Registrar medical and other reports prepared by physicians and other health care providers;*
> *(d) take and successfully complete any examinations or other tests as may be required by the Registrar* [section 92(2), *Traffic Safety Act*].

[25] In Order F2004-022, the Commissioner accepted *Black's Law Dictionary*'s (7th ed.) definition of "sanction" as meaning "a penalty or coercive measure that results from failure to comply with a law, rule or order". The DFMB received a complaint from the HCC which gave rise to an administrative investigation in which it sought further medical information from the Complainant to ensure that he could safely drive. This resulted in certain conditions being placed on the Complainant's driving privileges. The DFMB is the branch empowered by the Registrar to, among other things, enforce law by refusing licensing or putting terms on individuals' driving privileges:

> *The Registrar may, at any time,*
>
> *(a) cause special conditions or restrictions, or both, to be stated on an operator's licence;*
> *(b) require a holder of or an applicant for an operator's licence to submit to a medical or physical examination by a person that the Registrar designates;*
> *(c) require a holder of or an applicant for an operator's licence to submit to an examination of the person's driving ability.* [section 15(2), *Operator Licensing and Vehicle Control Regulation*].

I accept the Public Body's argument that if the complainant did not comply with the requirement to submit a medical report, the DFMB's sanction or "coercive measure" would be to disqualify him from driving a motor vehicle and/or cancel or suspend the complainant's vehicle registration. I am of the view that this activity meets the definition of "law enforcement" established in Order F2002-024 and in FOIP, and therefore the Public Body's collection of the Complainant's personal information was permitted under section 33(b) of FOIP.

[26] The DFMB also contended that its collection of the Complainant's personal information was in compliance with section 33(c) of FOIP. This provision enables public bodies to collect personal information that relates directly to and is necessary for the activity or operating program administered by it. According to the Public Body, the information the DFMB received was directly related to the driver program that it administers since the HCC provided a description of health symptoms that could affect the Complainant's ability to operate a vehicle. The DFMB argued that the personal information is also necessary for the activity or operating program, as the Public Body's purpose is running enforcement programs related to licence suspensions, medical conditions, identifying high-risk drivers and ongoing monitoring and sanctioning of such drivers.

[27] Since I have already found that the Public Body collected the Complainant's personal information in accordance with section 33(b) of FOIP, I do not need to consider whether its collection met the requirements of section 33(c).

(b) Was the Public Body authorized to collect the Complainant's personal information from a source other than the Complainant, in accordance with section 34 of FOIP?

[28] The Complainant stated that the DFMB can only act upon information that a driver provides him or herself, or that is presented by a physician. However, FOIP permits indirect collection of personal information under certain circumstances. The Public Body asserted it had authority under FOIP to collect the Complainant's personal information from another source according to the following section:

> *A public body must collect personal information directly from the individual the information is about unless…*
> *(g) the information is collected for the purpose of law enforcement*
> [section 34(1)(g), FOIP].

[29] I have already established in the preceding section that the activities carried out by the DFMB were for law enforcement purposes. The DFMB is tasked by the Registrar with enforcing aspects of the *Traffic Safety Act* and *Operator Licensing and Vehicle Control Regulation*. That being the case, the Public Body was authorized to collect the Complainant's personal information from another source – the Organization – in compliance with section 34 of FOIP.

[30] Alberta Infrastructure and Transportation stated that information about driver competency is received from medical professionals as well as police and members of the general public. Neither the *Traffic Safety Act* nor the *Operator Licensing and Vehicle Control Regulation* limit the sources from which this information may be collected. In fact, the section below from the *Traffic Safety Act* entitled "Confidential Reporting" assumes that information from other sources will be received and protects those individuals from being identified[1]:

> *If information is provided to the Registrar in good faith that a person*
> *(a) is not competent to safely operate a motor vehicle,*
> *(b) is not qualified or does not have the ability to operate a motor vehicle safely, or*
> *(c) may have a medical or physical condition that impairs his or her ability to safely operate a motor vehicle,*
> *no person shall release the identity of the person providing the information, or release any information provided by that person that could reasonably be expected to reveal that person's identity, unless the person providing the information authorizes the release of that identifying information in writing* [section 60.1, *Traffic Safety Act*].

The above section, applicable to the general public, is distinct from section 60 of the *Traffic Safety* Act, which provides that no liability accrues against a physician or other health care provider that offers information to the Registrar. Alberta Infrastructure and Transportation's website also explains the complaint process for any person to report concerns about someone's driving competency. Complainants are asked to submit specific details of any medical conditions.

(c) Did the Public Body have authority to use the Complainant's personal information, in compliance with section 39(1) of FOIP?

[31] The Complainant accepted that HCC sent his personal information without being specifically asked by the DFMB to do so. But, he was concerned that the Public Body went on to use it to apply driving conditions without proper authority. Again, he was of the view that the DFMB could only use information received from a physician in this context. FOIP states that:

> *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,*
> (b) *If the individual the information is about has identified the information and consented, in the prescribed manner, to the use, or*
> (c) *For a purpose for which that information may be disclosed to that public body under section 40, 42, or 43* [section 39(1), FOIP].

[1] Although the *Traffic Safety Act* generally prohibits the release of any information that could reasonably be expected to reveal the identity of a person who submits concerns to the DFMB, this investigation has identified the organization from which the report about the Complainant originated. Section 4(6) of PIPA states that PIPA prevails in cases in which another statute is inconsistent with PIPA. In order to furnish the Complainant with the results of the investigation into his complaint made under section 46(2) of PIPA, it was necessary to identify the source of the report to the DFMB.

[32] In disclosing the Psychologist's letter to the DFMB, HCC's stated intent was maintaining "public safety." The Organization reported that "the matter relates to safety issues and your department might be concerned." Apparently, HCC's purpose for the disclosure was concern that, given the contents of the Psychologist's letter, public safety may have been compromised if the Complainant continued to drive. HCC believed that license "issuers" ought to be aware and take whatever action was deemed necessary.

[33] The DFMB did precisely that. It accepted information from HCC and used it to support its grounds to gather more detailed medical information directly through the Complainant by asking him to submit a medical report. The DFMB did not impose immediate conditions on the Complainant's license, but opted to investigate further. The DFMB policy states that anonymous complaints will not be investigated and that:

> *The Driver Fitness and Monitoring Branch (DFMB) shall verify the complaint is accurate, valid and bona fide and may conduct a personal interview with the complainant to obtain further information* [DFMB policy number TSS-DFM-524].

[34] It should be noted that section 59 of the *Traffic Safety Act* also provides for the establishment of a Medical Review Committee to act as an advisor regarding health or physical conditions that may affect an individual's ability to safely operate a motor vehicle. This Committee assists the DFMB in evaluating medical reports and making appropriate decisions about licensing. Only after receiving the medical reports from the Complainant did the Public Body impose the condition on his license for annual medical and psychological reports.

[35] This use is consistent with the intent of the HCC's disclosure and with the DFMB's purpose for collecting the information, described in earlier sections of this report. The Registrar's statutory authority was conferred to the DFMB as cited in paragraph 25. I therefore find that the DFMB's use of the Psychologist's letter was in compliance with section 39(1)(a) of FOIP because the personal information was used for the purpose for which the information was collected. It was used to apply licensing conditions and for no other purpose.

(d) Is the information disclosed by the Organization considered "personal information", pursuant to section 1(k) of PIPA, or "personal employee information" according to section 1(j) of PIPA?

[36] PIPA defines personal information as "information about an identifiable individual" [section 1(k)]. Unlike FOIP, PIPA also defines a subset of personal information as follows:

> *"personal employee information" means, in respect of an individual who* ***is an employee or a potential employee****, personal information reasonably required by an organization that is collected, used or disclosed* ***solely for the purposes of establishing, managing or terminating***
>
> *(i) an employment relationship, or*

> *(ii) a volunteer work relationship*
> *between the organization and the individual but does not include personal information about the individual that is unrelated to that relationship* [emphasis added, section 1(j), PIPA].

This issue must be decided because only "personal employee information" invokes application of section 21 of PIPA. Section 21 modifies PIPA's general requirement for consent in the employment context.

[37] HCC advised that its purpose for disclosing the Psychologist's letter was to notify the department concerned with driving privileges and for public safety. This purpose for disclosure is not related to "establishing, managing or terminating" the "employment relationship". Indeed, the Complainant was no longer an employee when HCC disclosed the letter and so the disclosure had no bearing on his employment. Certainly, the information was *collected* for "managing" the employment relationship. That is to say, the Complainant presented his employer with the letter in order to support his need for time away from work. However, HCC's *disclosure* was unrelated to the work relationship. PIPA sets a fairly high standard in deeming information personal employee information in that it requires that the disclosure be "solely" for the purposes of establishing, managing or terminating employment. This disclosure was not solely for that purpose, or even at all. Therefore, I am of the view that the information disclosed is not personal employee information.

[38] Although the definition of personal employee information only includes employees and potential employees, in a provision entitled "Disclosure of personal employee information", PIPA nonetheless makes *former* employees subject to section 21:

> *Notwithstanding anything in this Act other than subsection (2), an organization may disclose personal employee information about an individual without the consent of the individual if*
> *(a) the individual* ***is or was*** *an employee of the organization, or*
> *(b) the disclosure of the information is for the purpose of recruiting a potential employee* [emphasis added, section 21(1), PIPA].

In a past PIPA Order, the Commissioner referred to section 21 and stated:

> *So section 1(j) of the Act says it is not* personal employee information *if an individual in no longer an employee. Yet section 21 of the Act refers to the disclosure of* personal employee information *of individuals who "were" employees. How do I resolve this discrepancy?* [Order P2005-001, para 42].

[39] The Commissioner resolved this discrepancy by applying the "modern principle" of statutory interpretation [see paras 43-53] and decided that:

> *Reading the words of section 21(2) of the Act in their entire context, I find that "purposes" for disclosure referred to in section 21(2)(a) and (c) must be interpreted as purposes related to the employment or volunteer relationship, as set out in section 21(2)(b).*

> *Interpreting 21(2)(a) of the Act as allowing for the disclosure for purposes unrelated to the employment or volunteer work relationship would defeat the purpose of the Act… If "purposes" are not confined to the employment relationship, disclosure for the purposes of promoting unwanted contact with a former employee or promoting the taking of legal action against former employees would be allowed* [Order P2005-001, para 51-52].

In that case, the Commissioner determined that since the purposes for the former employer's disclosure were not related to the employment relationship, the information at issue was personal information and provisions in section 21 did not apply. I therefore apply the Commissioner's interpretation here in deeming the information in the present case as personal information, not personal employee information. Section 21 does not apply in this case making PIPA's general consent requirements applicable.

(e) Did the Organization require the consent of the Complainant to disclose his personal information, according to 7(1)(d) of PIPA?

[40] The Complainant alleged that the Organization was not permitted to disclose the Psychologist's letter without his consent. Had the Complainant been given the opportunity, he would not have consented. Indeed, PIPA ordinarily requires that organizations obtain consent from individuals before disclosing their personal information:

> *Except where this Act provides otherwise, an organization shall not, with respect to personal information about an individual…*
> *(d) disclose that information unless the individual consents to the disclosure of that information* [section 7(1)(d), PIPA].

However, one of the exceptions to the requirement to obtain consent, which HCC relied on for its disclosure, is:

> *An organization may disclose personal information about an individual without the consent of the individual but only if one or more of the following are applicable…*
> *(c) the disclosure of the information is to a public body and that public body is authorized or required by an enactment of Alberta or Canada to collect the information from the organization* [section 20(c), PIPA].

[41] There is no doubt that the disclosure by HCC was to a public body; I have already established in paragraph 4 that the DFMB meets the definition of a public body. I have also determined in paragraphs 22 through 25 that the Public Body was "authorized or required" by another statute to collect the personal information that the Organization disclosed.

[42] I find that HCC did not require the Complainant's consent to disclose his personal information, since section 20(c) of PIPA states that consent is not required if the disclosure is to a public body authorized to collect the information. In this case, the Public Body was authorized to collect the personal information by sections 33(b) and 33(c) of FOIP.

(f) Did the Organization disclose the Complainant's personal information for purposes that are reasonable, in compliance with section 19(1) of PIPA?

[43] According to section 19(1) of PIPA, an organization can only disclose an individual's personal information if its purpose is reasonable:

> *An organization may disclose personal information only for purposes that are reasonable.*

I have found that HCC's disclosure of the Complainant's personal information was permitted under section 20(c) of PIPA. That PIPA permits disclosure of information under certain circumstances without individuals' consent, presumes that those very purposes PIPA describes are reasonable.

[44] I note that HCC did not make its disclosure based on its own information about the Complainant's driving. Rather, the Organization disclosed information it received directly from the Complainant. The letter was written by the Complainant's own Clinical Psychologist about symptoms that affected his ability to drive. HCC provided a copy of the Psychologist's letter to the DFMB to substantiate the Organization's concerns. The letter suggested that the Complainant required time away from work because his work involved driving. HCC therefore supposed that this could impinge on the Complainant's overall ability to drive.

[45] Although the Complainant maintained that he was only unable to drive long distances, which his job required, I noted that the Psychologist's letter did not specify this. HCC logically concluded that the Complainant was precluded from driving at all, and therefore spoke with the Psychologist directly to determine whether the matter had been reported to the DFMB. Since no confirmation could be made[2], HCC made the decision to report the matter to the DFMB itself. This course of action demonstrates that the Organization attempted to determine whether the proper authorities had yet to be informed or whether HCC's disclosure would be moot.

[46] In deciding whether a purpose is reasonable, PIPA states:

> *Where in this Act anything or any matter*
> *(a) is described, characterized or referred to as reasonable or unreasonable, or*
> *(b) is required or directed to be carried out or otherwise dealt with reasonably or in a reasonable manner,*
> *the standard to be applied under this Act in determining whether the thing or matter is reasonable or unreasonable, or has been carried out or otherwise dealt with reasonably or in a reasonable manner, is what a reasonable person would consider appropriate in the circumstances* [section 2, PIPA].

[2] The Psychologist refused to confirm or deny whether the Complainant was a patient, thereby making further discussion fruitless in terms of determining if the Complainant's symptoms were reported to the DFMB.

Under the circumstances described earlier, I find that it was reasonable for HCC to disclose the Complainant's personal information. The DFMB's responsibilities include investigating complaints to ensure drivers do not pose risks to themselves or the public. The *Traffic Safety Act* actually requires individuals to undertake this activity themselves:

> *A person who holds or applies for an operator's licence shall immediately disclose to the Registrar a disease or disability that may be expected to interfere with the safe operation of a motor vehicle by the person* [section 16(1), *Operator Licensing and Vehicle Control Regulation*].

[47] The Complainant maintained that his symptoms turned out to be indicative of high blood pressure rather than a recurrence of post traumatic stress. I had no evidence before me in this regard. He contended that not all individuals suffering from high blood pressure are required to submit annual medical reports, making the conditions on his license unjust. However, even after receiving medical reports submitted by the Complainant, the DFMB decided to impose conditions on his license. This is within the DFMB's authority and the Commissioner has no jurisdiction to evaluate the DFMB's decision in this regard. In a past decision about the DFMB, the Commissioner previously remarked that:

> *The legislative regime gives a great deal of authority and discretion to the Registrar of Motor Vehicles to ensure the safe operation of motor vehicles in the province* [Order F2004-009, p.2].

The Commissioner has also asserted in another previous case that conditions on driving ought not be considered punishment:

> *Finally, I do not believe that the Applicant was punished. I want to lay to rest the common belief that a person has an unconditional right to drive a motor vehicle. The British Columbia Information and Privacy Commissioner has also dispelled this notion in British Columbia Order No. 28-1994. Driving is a privilege, not a right, as stated in the Alberta case of R. v. Such (1992), 132 A.R. 323 (Q.B.). The Applicant is not being punished by being asked, in accordance with policy, to prove competency to drive. In determining whether to require the Applicant to take the driving and other tests, Motor Vehicles* [now DFMB] *followed its written procedure, and examined the content and spirit of Record 1. The Applicant was not singled out or treated arbitrarily in this regard* [Order 96-010, p.7].

I find that the Organization's disclosure of the Complainant's personal information was in compliance with section 19(1) of PIPA.

VI. OTHER CONSIDERATIONS

[48] As noted earlier, the Complainant did not object to the HCC's collection of the Psychologist's letter and indeed, provided it of his own accord. He assumed that his employer would need some evidence of his need for some time away from work.

[49] The fact that HCC's collection of the Psychologist's letter was not examined in this report should not be construed as an acknowledgement that it is reasonable for employers to collect diagnostic or detailed medical information from employees to support a medical leave. The Privacy Commissioner of Canada has established in many findings[3] that in cases of casual illness or short and long term disability, an employer need only satisfy itself that a qualified medical practitioner has made the determination that an employee is unfit to work for a particular period of time (or is fit for work with accommodations or modifications, as the case may be). A statement from a doctor confirming that absence from work is justified should suffice in almost all cases.

[50] Diagnostic information should only be provided directly to the employer's group insurer who is responsible for evaluating an employee's eligibility for any benefits where applicable. An exception to this practice would be organizations with in-house health units staffed by qualified medical practitioners, who may reasonably receive this information provided it is kept in strict confidence. These units manage workplace injuries, accidents and safety which are governed by workers' compensation and occupational health and safety requirements. In such cases, collection of diagnostic information by an employer may be reasonable.

[51] I raise this issue because had HCC made use of a standardized insurance form required for completion by its employees' medical practitioners, the Complainant would not have submitted a letter from his Psychologist that disclosed the details of his condition. Moreover, the Psychologist would be prevented from disclosing more personal information than necessary to support the Complainant's absence.

VII. SUMMARY OF FINDINGS & RECOMMENDATIONS

[52] From this investigation I have determined that the Complainant's employer did not require his consent to disclose personal information it received about symptoms that affected his driving. I found that Hearing Conservation Consultants' disclosure of the Psychologist's letter without the Complainant's consent was in compliance with PIPA because the disclosure was to a public body authorized to collect the information [section 20(c), PIPA]. The disclosure was found to be for purposes that were reasonable, in accordance with section 19(1) of PIPA.

[53] I found that the public body in this case, the Driver Fitness and Monitoring Branch, a branch within Alberta Infrastructure and Transportation, collected the Complainant's personal information for purposes consistent with section 33(b), and in the manner (i.e. from another source) allowed by section 34(1)(g) of FOIP. The DFMB's use of the Complainant's personal information to determine whether to place conditions on his driving privileges was in accordance with section 39(1)(a) of FOIP.

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[3] See PIPEDA Case Summary #135, #226, #233, #235, #257, #284 and #287.

[54] Although I took the position that neither the Organization nor the Public Body breached PIPA or FOIP, in order to avoid a recurrence of this incident, I made the following recommendations to HCC:

1. Make standardized insurance forms available to employees to submit directly to its benefits provider in cases of short and long-term illness or disability.
2. In the event that a doctor's note is required for HCC's own purposes to support casual illness, provide employees with a standardized form for doctors to complete that do not include fields for symptoms or diagnoses.
3. Amend its policies according to the above and notify employees of these changes.
4. Develop and follow a written privacy policy.

[55] The last recommendation was made in light of the fact that HCC was found not to have a privacy policy in place as required of all organizations, pursuant to section 6 of PIPA. I was of the view that the recommendations would improve HCC's compliance with PIPA and successfully resolve this complaint. The Organization agreed to implement the recommendations and the Public Body accepted the findings. The Complainant was satisfied by the outcome.

[56] This matter is considered resolved and is now closed.

VIII. CONCLUSIONS

[57] Employers and members of the public are able to report legitimate concerns about a person's fitness to drive. While the Driver Fitness and Monitoring Branch does not necessarily act on every complaint and will not investigate anonymous complaints, if it has reasonable and probable grounds to believe that a person poses a risk to him or herself or the public, it is entitled to require a person to submit a medical or physical examination and place conditions on driving privileges. In this case, both the Complainant's former employer and the DFMB acted in compliance with Alberta's privacy legislation with respect to concerns about his driving. Although the Complainant disputes the need for him to undergo annual examinations to justify his driver fitness, this issue is not within the jurisdiction of the Commissioner to review or decide.

[58] In the present case, the letter submitted to the employer contained a great deal of personal information about the Complainant that HCC would not generally require for the purposes of supporting a leave from work. In the case of claims for short and long term illness or disability, usually only benefit providers are entitled to diagnostic information about the employee, as they - not the employer - must establish whether a particular condition is eligible for coverage. An employer is typically only entitled to accommodation and fitness for duty information.

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