ALBERTA

INFORMATION AND PRIVACY COMMISSIONER

ORDER 98-002

July 8, 1998

WORKERS' COMPENSATION BOARD

Review Number 1288

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I. BACKGROUND

[para 1.] On February 19, 1997, the Applicant applied to the Workers' Compensation Board (the "Public Body") for access under the *Freedom of Information and Protection of Privacy Act* (the "Act"), as follows:

> *I am requesting full and complete disclosure of any and all information held by, generated by, and/or known to the Workers' Compensation Board, or anyone acting on the Board's behalf, or providing information to the Board relating to me, or my claims, in any way, by any reference, including, but not exclusive to*, [the Applicant's name, Workers' Compensation Board claim number, social insurance number and Alberta health care number].

[para 2.] When, on April 22, 1997, the Applicant had not yet obtained access within the 30-day time limit and the extended time limit under the Act, the Applicant asked my Office to review the Public Body's response.

[para 3.] I authorized mediation between the Applicant and the Public Body.

[para 4.] The Applicant obtained access to the last of the records on July 29, 1997.

[para 5.] On September 10, 1997, the Applicant asked that I conduct an inquiry. The issues set out for the inquiry were duty to assist (section 9(1) of the Act), time limits for responding (section 10 and section 13), and accuracy and completeness of personal information (section 34). The Applicant's issue under section 34 raised the issue of the protection of personal information (section 36). A fee waiver (section 87) was also at issue. However, as the Public Body granted the fee waiver before the inquiry, that matter was no longer an issue for the inquiry.

[para 6.] The inquiry was originally scheduled for December 4, 1997. I received the Public Body's and the Applicant's written submissions on November 20, 1997.

[para 7.] Prior to the inquiry, I requested that the Public Body produce two witnesses. That request necessitated that the inquiry be rescheduled to January 27 and 28, 1998.

[para 8.] At the conclusion of the day on January 28, I asked that the Public Body submit additional information and that the parties submit closing written arguments. I received that information and the closing written arguments on February 27, 1998.

[para 9.] On January 29, 1998, I conducted an *in camera* session with the Applicant, after which my Office provided a summary to the Public Body and allowed the Public Body time to respond. The Public Body submitted its response with its closing written arguments on February 27, 1998.

II. RECORDS AT ISSUE

[para 10.] The records themselves are not at issue, as the issues concern the Public Body's compliance with its duties under the Act, as those duties relate to the records. I will be referring to the records in that context.

[para 11.] The records consist of all those records on the Applicant's claim file, provided to the Applicant, free of charge, through the Public Body's Access to Information area. The records also consist of all those records the Public Body found in its other areas and systems, when the Applicant made a request for access under the Act.

[para 12.] In this Order, I will identify the records by date of document or by description, as needed. Otherwise, I will refer to the records generally as the "records".

III. ISSUES

[para 13.] There are four issues in this inquiry:

> A. Did the Public Body make every reasonable effort to assist the Applicant and to respond to the Applicant openly, accurately and completely, as required by section 9(1) of the Act?
>
> B. Did the Public Body comply with the time limit for responding to the Applicant, as required by section 10 and as permitted by section 13 of the Act?
>
> C. Did the Public Body make every reasonable effort to ensure that the Applicant's personal information was accurate and complete, as required by section 34 of the Act?
>
> D. Did the Public Body protect the Applicant's personal information, as required by section 36 of the Act?

[para 14.] The Applicant's submission combined Issues C and D. However, I have separated those issues for the purposes of this Order.

IV. DISCUSSION OF THE ISSUES

ISSUE A: Did the Public Body make every reasonable effort to assist the Applicant and to respond to the Applicant openly, accurately and completely, as required by section 9(1) of the Act?

1. General

[para 15.] Section 9(1) of the Act reads:

> *9(1) The head of a public body must make every reasonable effort to assist applicants and to respond to each applicant openly, accurately and completely.*

[para 16.] The Applicant has five complaints, which are set out below.

a. Inaccurate estimates

[para 17.] The Applicant complains that the Public Body gave three inaccurate estimates about the number of records found in the Public Body's Appeals Advisory area. The Applicant says that the Appeals Advisory area initially gave an estimate of 1500 pages of records, but that estimate was revised two more times, until finally the estimate was only 350 pages of records.

[para 18.] The Applicant also complains that the Public Body gave an inaccurate estimate of the Applicant's vocational rehabilitation records, which the Applicant maintains the Public Body said was up to 75 pages of records. The Applicant received 48 pages.

[para 19.] The Public Body says that there were only two instances in which a revised estimate was given.

[para 20.] First, a revision to the estimate of pages was made because of an error in estimating the number of documents held by the Appeals Advisory area. The Public Body says that when it realized the error in estimating, it corrected the Applicant's estimate and another applicant's estimate. The Public Body maintains that it has since rectified the problem so that it will not occur on future requests.

[para 21.] Second, the Applicant, upon changing the request to a review of documents, identified which documents the Applicant wished copies of, thereby further reducing the fee estimate.

[para 22.] As to the number of vocational rehabilitation records, the Public Body says that several of those pages of records were photocopied double-sided before being given to the Applicant.

b. Vocational rehabilitation records

[para 23.] The Applicant was told that the Applicant's vocational rehabilitation records had been destroyed. Subsequently, the Public Body located those records in a storage facility. The Applicant's file was found in 1997, when a list of the records located in the storage facility was made.

[para 24.] The Public Body says it had a standard practice of destroying such records and only retaining reports specifically intended for use in claims adjudication. Such reports were placed on the claim file. The Public Body maintains that the destruction of records was consistent with the Public Body's record retention schedule, as approved by the secretary of the Public Records Committee.

[para 25.] The Public Body also says that when the vocational rehabilitation records were located, it provided a copy to the Applicant.

c. Non-disclosure of memos

[para 26.] The Applicant says that the Public Body did not disclose one memo, allegedly attached to the Applicant's vocational rehabilitation records file. The Applicant maintains that the Public Body informed the Applicant that the memo was "attached". In the Applicant's submission, the Applicant recounts a conversation with an employee of the Public Body, who told the Applicant that the "…file contained 50 to 75 records including attached memos". The Applicant is concerned that the "attached" memo was destroyed.

[para 27.] The Applicant also says that the Public Body did not disclose a memo that the Applicant said was attached to the Applicant's "medical information", which was located in the Applicant's case manager's desk.

[para 28.] The Public Body says that it provided the Applicant with a full copy of the vocational rehabilitation records, including all memos on that file. It also provided the Applicant with a January 31, 1997 memo that was found in the Applicant's case manager's desk.

d. Additional records located on the Applicant's access request under the Act

[para 29.] The Applicant says that an additional 348 records were uncovered as a result of the Applicant's access request under the Act. The Applicant is concerned that those records were not on the Applicant's claim file given to the Applicant.

[para 30.] The Applicant also refers, in particular, to those records located in the Applicant's case manager's desk, a chest exam report and a laboratory discharge report that were not on the Applicant's claim file.

e. Memo from FOIP Office to Office of the Director of Claimant Services

[para 31.] The Applicant thought that the Public Body should have disclosed the memo from the FOIP Office to the Office of the Director of Claimant Services, which requested that the Director's Office search for records requested by the Applicant.

[para 32.] The Public Body explained that it normally does not include records generated as a result of an access request, with the records responsive to the request.

2. My decision under section 9(1)

[para 33.] Regardless of the number of estimates the Public Body may have given the Applicant for the Appeals Advisory records, the very fact of revision of estimates speaks to responding to the Applicant accurately, in that the Public Body corrected that estimate and the fee estimate when it realized the page estimate was wrong.

[para 34.] The differing number of vocational rehabilitation records estimated and received may be explained by the fact that some records were photocopied double-sided, while other records were photocopied single-sided. That accounts for the 48 pages given to the Applicant. I checked the Applicant's copy against the Public Body's file, and I am satisfied that this is the case.

[para 35.] Therefore, I am satisfied that the Public Body made every reasonable effort to respond to the Applicant accurately with regard to the estimates given.

[para 36.] I have found that the vocational rehabilitation records contain eleven memos, which were disclosed to the Applicant. I did not find any evidence that memos might have been destroyed.

[para 37.] I have also found a memo I believe was attached to the Applicant's "medical information", namely, a February 3, 1997 Medical Advice Referral, and another memo dated January 31, 1997. Both of these were disclosed to the Applicant and are on the Applicant's claim file.

[para 38.] Therefore, I am satisfied that the Public Body made every reasonable effort to respond to the Applicant completely with regard to the memos.

[para 39.] During the inquiry, I found that the Applicant's claim file did contain the records found in the case manager's desk, as well as the chest exam report and the laboratory discharge report. The Applicant nevertheless maintains that the Applicant received two copies of the claim file, and the latter two records were not in the first copy.

[para 40.] As records were found, such as the vocational rehabilitation records, the existence of those records was conveyed to the Applicant, which evidences both that a thorough search was conducted and that the Public Body responded to the Applicant completely. The fact that records were loaned to the Applicant to take home to review is further evidence that the process was open.

[para 41.] The fact that records were found in the case manager's desk indicates that the Public Body conducted a thorough search for records.

[para 42.] There is also the matter of the records that were not on the Applicant's claim file, but which were found on the Applicant's request for access under the Act.

[para 43.] The Public Body maintains a separate "Access to Information" area. In this Access to Information area, a worker may obtain a complete copy of the worker's claim file, free of charge, without having to make a request for access under the Act.

[para 44.] A claim file contains such things as records of telephone conversations with the worker, among others; the Public Body's requests for medical reports, both from its internal Medical Advisors and from independent physicians; those medical reports; decisions of the Public Body concerning the worker's entitlement to compensation; the case

manager's file summaries; and correspondence between the Public Body and the worker.

[para 45.] According to the Public Body, the claim file contains only that information that the Public Body uses to make decisions concerning the worker's entitlement to compensation under the *Workers' Compensation Act*, R.S.A. 1980, c. W-16. Therefore, if a worker wants personal information that may be held in other areas of the Public Body, the worker must make a separate request for access under the Act.

[para 46.] As provided by section 3(a) of the Act, the Act is in addition to and does not replace existing procedures for access to information or records. Therefore, the Public Body's dual process for providing records is not in violation of the Act. Consequently, there cannot be a breach of the duty to respond to an applicant completely under section 9(1) if what an applicant gets on an internal request for the applicant's claim file is different from what an applicant gets on a request for access under the Act. The matter of what is and is not on an applicant's claim file is more properly an issue under section 34 of the Act.

[para 47.] I would caution the Public Body and other public bodies that, if a dual process is in place for accessing information, a public body meets its duty to assist an applicant under section 9(1) only if it informs the applicant that such a dual process is in place. In this case, I confirmed that the Applicant was aware of the dual process.

[para 48.] Finally, I agree that the Public Body was not required to provide access to its memo from the FOIP Office to the Office of the Director of Claimant Services, which requested that the Director's Office search for records requested by the Applicant. The Public Body used the date of the Applicant's request as the cut-off for a search for records. The memo was produced after that date. If the Applicant wanted anything further after the date of the request, the Applicant would have to make another request or submit a continuing request.

[para 49.] In this case, the Public Body subsequently provided the Applicant with a copy of the memo, as well as a copy of the records produced after the date of the Applicant's request.

[para 50.] I find that the Public Body made every reasonable effort to assist the Applicant and to respond to the Applicant openly, accurately and completely, as required by section 9(1) of the Act.

ISSUE B: Did the Public Body comply with the time limit for responding to the Applicant, as required by section 10 and as permitted by section 13 of the Act?

[para 51.] Section 10 and section 13 of the Act read:

> *10(1) The head of a public body must make every reasonable effort to respond to a request not later than 30 days after receiving it unless*
>
> > *(a) that time limit is extended under section 13, or*
> >
> > *(b) the request has been transferred under section 14 to another public body.*
>
> *(2) The failure of the head to respond to a request within the 30-day period or any extended period is to be treated as a decision to refuse access to the record.*
>
> *13(1) The head of a public body may extend the time for responding to a request for up to 30 days or, with the Commissioner's permission, for a longer period if*
>
> > *(a) the applicant does not give enough detail to enable the public body to identify a requested record,*
> >
> > *(b) a large number of records is requested or must be searched and responding within the period set out in section 10 would unreasonably interfere with the operations of the public body,*
> >
> > *(c) more time is needed to consult with a third party or another public body before deciding whether or not to grant access to a record, or*
> >
> > *(d) a third party asks for a review under section 62(2) or 73(3).*
>
> *(2) If the time is extended under subsection (1), the head of the public body must tell the applicant*

(a) the reason for the extension,

(b) when a response can be expected, and

(c) that the applicant may make a complaint to the Commissioner or an adjudicator, as the case may be, about the extension.

[para 52.] The Applicant complains that the Public Body took six months to respond to the Applicant's request.

[para 53.] By letter dated February 19, 1997, and received by the Public Body on February 20, 1997, the Applicant submitted a request for access under the Act to the Applicant's case manager (the "case manager") employed by the Public Body. On February 21, 1997, the case manager informed the Applicant that the Applicant's request would be forwarded to the Public Body's Access to Information area after an outstanding matter had been deal with on the Applicant's file.

[para 54.] On March 14, 1997, the Applicant wrote to the Public Body's Freedom of Information and Privacy Coordinator (the "FOIP coordinator"), to remind the FOIP coordinator that the Applicant's request was made under the Act, and not under the Public Body's own procedure for accessing the Applicant's claim file through the Public Body's Access to Information area. The letter also reminded the FOIP coordinator about a meeting on an unrelated matter, to be held on March 24, 1997, between the Applicant, the FOIP coordinator, and others.

[para 55.] On March 24, 1997, the FOIP coordinator met with the Applicant, who commented that there had not been any response to the Applicant's request under the Act.

[para 56.] On March 25, 1997, the FOIP coordinator located the Applicant's request within the Public Body, informed the Applicant of this on March 26, 1997, and commenced searching for records.

[para 57.] At this point, the Public Body had gone over the time limit set out by section 10(1) of the Act. The Public Body was in breach of section 10(1). Under section 10(2) of the Act, the failure to respond to a request within the 30-day time period or any extended period is to be treated as a decision to refuse access to the record.

[para 58.] The Public Body submits that section 10(1) does not prescribe an absolute time period by which a public body must respond. It only

requires that a public body "make every reasonable effort" to respond within 30 days of receiving a request.

[para 59.] I accept the following interpretation of "every reasonable effort", as set out by the British Columbia Information and Privacy Commissioner in British Columbia Order 30-1995:

> *Every reasonable effort is an effort which a fair and rational person would expect to be done or would find acceptable. The use of 'every' indicates that a public body's efforts are to be thorough and comprehensive...*

[para 60.] In my view, it cannot be said that the Public Body made "every reasonable effort" to respond to the Applicant when it appears that some of its employees have not been trained to recognize an access request under the Act and to immediately send that request to the FOIP coordinator.

[para 61.] On April 3, 1997, the FOIP coordinator wrote to the Applicant to extend the time limit under section 13 of the Act for responding to the Applicant. The FOIP coordinator said that the Applicant could expect a response to the request within 60 days from the date of the Applicant's request for access (February 19, 1997). Therefore, the Public Body was to respond by April 21, 1997.

[para 62.] The reasons for the extension included the large number of records involved in the Applicant's request (estimated at 2045 pages) and the large number of requests for access received by the Public Body during the same time as the Applicant's request. The FOIP coordinator said that to respond to all applicants within the 30-day time limit would interfere with the overall operations of the Public Body.

[para 63.] The Public Body's evidence is that only one staff member was available full-time for processing requests, and one other was available as back-up. Two staff members are presently available as back-up. In my view, one full-time person for processing requests for the Public Body is insufficient for an organization the size of the Public Body. Furthermore, a large number of requests and insufficient staff to process those requests are not reasons for extending the time limit under section 13.

[para 64.] By April 22, 1997, the Public Body had not yet responded to the Applicant. On that date, the Public Body was in breach of section 13 of the Act.

[para 65.] The final batch of records from Administrative Services was not available for the Applicant until July 29, 1997. The Public Body says that these were records from its corporate security area, and that procedures have since been implemented such that a delay in accessing corporate security records should not occur in the future.

[para 66.] The Public Body agrees that it took an unreasonable amount of time to process the Applicant's request, and apologizes to the Applicant.

[para 67.] I find that the Public Body did not comply with the time limit for responding to the Applicant, as required by section 10 and as permitted by section 13 of the Act. However, the Public Body responded to the Applicant before the inquiry. Therefore, on the particular facts of this case, I do not find it necessary to order that the Public Body comply with its duty to respond to the Applicant, as the Public Body has already responded.

[para 68.] However, I caution the Public Body and other public bodies to ensure that its staff are adequately trained to recognize and respond to access requests, and that there are sufficient resources available to respond within the time limits set out under the Act.

ISSUE C: Did the Public Body make every reasonable effort to ensure that the Applicant's personal information was accurate and complete, as required by section 34 of the Act?

1. General

[para 69.] Section 34 of the Act reads:

> *34 If an individual's personal information will be used by a public body to make a decision that directly affects the individual, the public body must*
>
> > *(a) make every reasonable effort to ensure that the information is accurate and complete, and*
> >
> > *(b) retain the personal information for at least one year after using it so that the individual has a reasonable opportunity to obtain access to it.*

[para 70.] Only section 34(a) is at issue in this inquiry.

[para 71.] The Applicant's complaint is that records were not on the Applicant's claim file when the Public Body made decisions affecting the Applicant. Those records (the "listed records") include:

> (i) an investigation report concerning the Public Body's surveillance of the Applicant (the "investigation report")
>
> (ii) four internal memos of the Public Body, documenting telephone calls from the Applicant (the "internal memos")
>
> (iii) Dr. X.'s clinical notes about the Applicant ("Dr. X.'s clinical notes"). Dr. X. was the Applicant's family physician from 1981 to 1996. The clinical notes record all the Applicant's visits to Dr. X. over those years.
>
> (iv) the Applicant's vocational rehabilitation records (the "vocational rehabilitation records")
>
> (v) records from areas and systems within the Public Body, namely, Administrative Services, Appeals Commission, Appeals Tracking System, Case Information System, Claims Services Review Committee, Electronic Notes, Government Relations, Office of the Appeals Advisor, Office of the Director of Claimant Services, and Office of the President (the "records from areas and systems within the Public Body").

[para 72.] The Applicant's concern about the listed records not being on the Applicant's claim file is that the Public Body reviews only the claim file when it makes a decision about entitlement to compensation under the *Workers' Compensation Act*. Because the decisions are based only on the records that are on the claim file, the Applicant believes that all the Public Body's records concerning the Applicant should be on the Applicant's claim file.

[para 73.] I understand the Applicant's argument to be that because the listed records were not on the Applicant's claim file when the Public Body made its decisions, the Public Body breached its duty under section 34(a) of the Act to make every reasonable effort to ensure that the Applicant's personal information was complete. That is the matter I have to determine. Under section 34, I have no jurisdiction to decide what personal information a decision-maker should use when making a decision.

2. How is section 34(a) to be interpreted?

[para 74.] Section 34(a) begins with a conditional clause, which contains two conditions that must be satisfied before section 34(a) applies to a public body: (i) there must be an individual's personal information, and (ii) a public body must intend to use the personal information to make a decision that directly affects the individual. If those two conditions are met, then section 34(a) imposes a duty on a public body to make every reasonable effort to ensure that the personal information is accurate and complete.

[para 75.] Section 34 is worded in the future tense ("will be used") so that a public body will know that any time it plans to use an individual's personal information to make a decision directly affecting the individual, it must comply with the duty imposed by section 34(a).

[para 76.] An applicant may complain that a public body has not complied with its duty under section 34(a). Under section 51(1)(a), I may investigate to ensure compliance and, under section 51(1)(b), make an order under section 68(3)(a).

[para 77.] Accordingly, I do not interpret the future tense in section 34(a) to mean that a complaint can be made about non-compliance with section 34(a) only when a public body is about to make a decision directly affecting an individual, but has not yet made that decision. Such an interpretation would negate my ability to examine whether a public body complied with its duty under section 34(a) after it had made its decision.

3. Is there an individual's personal information?

[para 78.] "Personal information" is defined in section 1(1)(n) of the Act, which reads:

> *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,*
> >
> > *(ii) the individual's race, national or ethnic origin, colour or religious or political beliefs or associations,*

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

(iv) an identifying number, symbol or other particular assigned to the individual,

(v) the individual's fingerprints, blood type or inheritable characteristics,

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

> *(vii) information about the individual's educational, financial, employment or criminal history, including criminal records where a pardon has been given,*
>
> *(viii) anyone else's opinions about the individual, and*
>
> *(ix) the individual's personal views or opinions, except if they are about someone else.*

[para 79.] I have reviewed the listed records. I find that all the listed records contain the Applicant's personal information.

4. Did the Public Body use the Applicant's personal information to make a decision that directly affects the Applicant?

a. Decision that directly affects the Applicant

[para 80.] The *Freedom of Information and Protection of Privacy Act* came into force on October 1, 1995. Before that date, the Public Body did not have to comply with the duty imposed under section 34 of the Act concerning its decisions. Consequently, I do not have the jurisdiction to consider, and I will not consider, the following decisions directly affecting the Applicant: decisions made by the Public Body's employees before October 1, 1995; the decision of the Claims Services Review Committee ("CSRC") made on August 13, 1993; and the decision of the Appeals Commission made on April 25, 1995.

[para 81.] I have reviewed all the Records, and have found four decisions made by the Public Body for the purposes of section 34. Those four decisions concern the Applicant's entitlement to compensation under the *Workers' Compensation Act*.

[para 82.] I have listed those decisions according to the date they were communicated to the Applicant:

Date decision communicated to Applicant	Decision about Applicant's entitlement concerning:
September 4, 1996 (decision of case manager)	Permanent clinical impairment; psychological/psychiatric condition
January 27, 1997 (decision of Claims Services Review Committee)	Ongoing problems related to the compensable injury; earnings loss supplement; permanent partial disability; benefits during medical investigation (at hearing, Applicant withdrew appeal of decision relating to psychological/psychiatric condition)
March 3, 1997 (decision of case manager)	Chronic pain/chronic pain syndrome
August 6, 1997 (decision of case manager)	Ongoing problems related to the compensable injury; earnings loss supplement; permanent partial disability; benefits during medical investigation; chronic pain/chronic pain syndrome; vocational services

b. Use of the Applicant's personal information to make a decision

[para 83.] I find that the Public Body used the Applicant's personal information, as contained in the following listed records, to make a decision that directly affects the Applicant:

Date decision communicated to Applicant	Personal information used, as contained in the listed records
September 4, 1996	Dr. X.'s clinical notes
January 27, 1997	Investigation report; Dr. X.'s clinical notes
March 3, 1997	Personal information used, but not from listed records
August 6, 1997	Dr. X.'s clinical notes; vocational rehabilitation records

[para 84.] None of the listed records were used in making the March 3, 1997 decision regarding entitlement to compensation for chronic pain/chronic pain syndrome. Instead, the March 3, 1997 decision used the Applicant's personal information contained in the January 27, 1997

decision of the CSRC, which found that the Applicant's ongoing problems were not related to the Applicant's compensable injury. As there is no issue about whether the CSRC's decision is on the Applicant's claim file and, consequently, whether the Public Body made every reasonable effort to ensure that that personal information was accurate and complete, I do not find it necessary to consider the March 3, 1997 decision in this Order.

[para 85.] I further find that the Public Body did not use the personal information contained in the internal memos or the records from areas and systems within the Public Body, to make a decision that directly affects the Applicant.

5. Did the Public Body make every reasonable effort to ensure that the Applicant's personal information was accurate and complete?

a. Accurate and complete personal information

[para 86.] Section 34 incorporates a fundamental principle of "fair information practices", in that it requires that public bodies, who use personal information to make decisions about individuals, ensure that the personal information is accurate and complete. As stated in Ontario Investigation I95-031M, "The importance of this 'data quality' principle cannot be overstated; its absence can lead to serious consequences."

[para 87.] The Concise Oxford Dictionary, Ninth Edition, defines "accurate" to mean, in part, "careful; precise; lacking errors", and defines "complete to mean, in part, "having all its parts; entire; finished". Black's Law Dictionary defines "complete" to mean, in part, "including every item or element; without omissions or deficiencies; not lacking in any element or particular". I accept those definitions for the purposes of interpreting section 34(a).

b. Every reasonable effort

[para 88.] Black's Law Dictionary defines "reasonable", as follows:

> *Fair, proper, just, moderate, suitable under the circumstances. Fit and appropriate to the end in view...Not immoderate or excessive, being synonymous with rational, honest, equitable, fair, suitable, moderate, tolerable.*

[para 89.] I accept that definition of "reasonable", with particular emphasis on "fair" and "suitable under the circumstances".

[para 90.] Earlier in this Order, I said that I accepted the interpretation of "every reasonable effort", as set out in British Columbia Order 30-1995. That full quotation concerning "every reasonable effort", as it relates to the equivalent of section 34(a) of the Act, is:

> *Every reasonable effort is an effort which a fair and rational person would expect to be done or would find acceptable. The use of 'every' indicates that a public body's efforts are to be thorough and comprehensive and that it should explore all avenues in verifying the accuracy and completeness of the personal information.*

[para 91.] I accept that interpretation of "every reasonable effort" as it relates to section 34(a). In my view, "every reasonable effort" requires that a public body take positive steps to ensure that the personal information is accurate and complete before using the personal information to make a decision. This would entail having adequate procedures in place to properly verify the accuracy and completeness of the personal information, thereby ensuring accuracy and completeness.

c. Completeness of the listed records on Applicant's claim file

[para 92.] The Applicant's complaint is that the Public Body made decisions affecting the Applicant when the listed records were not on the Applicant's claim file, so the Public Body did not ensure that the Applicant's personal information was complete, as required by section 34(a). The Applicant says that the Applicant's "medical records", in particular, were not on the Applicant's claim file because they were in the Applicant's case manager's desk.

[para 93.] The Applicant says that during a meeting with the case manager's supervisor and the manager of Claimant Services, held on June 25, 1997, the Applicant was informed that the medical records were found in the case manager's desk. According to the Applicant, there was also an attached memorandum indicating the reason why the Applicant's medical records were in the case manager's desk. The Applicant maintains that the Applicant did not receive a copy of that memorandum.

[para 94.] I believe that the "medical records" to which the Applicant refers are Dr. X.'s clinical notes.

[para 95.] During the inquiry, the case manager identified 12 pages of records that were not on the Applicant's claim file, but were in the case manager's desk: (i) the investigation report (seven pages), (ii) the internal

memos (four pages), and (iii) a January 31, 1997 memo from the case manager's supervisor to the case manager (one page).

[para 96.] The Public Body confirmed that the investigation report and the internal memos were in the case manager's desk, but maintained that the Applicant's medical records were not in the case manager's desk. The Public Body also said that the vocational rehabilitation records had only recently come to light. Those records, which had been scheduled for destruction, had been found in a storage area.

[para 97.] Under section 34(a), a public body must make every reasonable effort to ensure that an individual's personal information is complete if a public body intends to use the personal information to make a decision.

[para 98.] Implicit in the word "complete" is that nothing has been omitted: every item or particular that is relevant to making the decision has been included and is available to the decision-maker. If the opposite is true, then the personal information is incomplete.

[para 99.] One way of ensuring that the personal information is available to the decision-maker, and therefore complete, is to ensure that it is on the file at the time the file is reviewed and the decision is made. However, if the personal information is off the file, that does not necessarily mean that the personal information is incomplete. As long as the personal information is otherwise available to the decision-maker when that person makes a decision, it seems to me that the personal information is complete for the purposes of section 34(a).

[para 100.] Having said this, it is my view that normally all the personal information that a decision-maker will use to make a decision should be on a file. The fact that personal information is not on a file may require an explanation as to whether the information used was complete and secure.

[para 101.] The issue before me is whether the personal information was complete, in that it was available, at the time the Public Body intended to make a decision directly affecting the Applicant. Therefore, to determine completeness, I have focused on the time frame of the September 4, 1996, January 27, 1997, and August 6, 1997 decisions.

i. Internal memos

[para 102.] I have already found that the personal information contained in the internal memos was not used to make a decision affecting the

Applicant. Furthermore, in my view, the personal information contained in the internal memos would not have been relevant to a decision about whether the Applicant was entitled to compensation. Consequently, whether the internal memos were available to the decision-maker, and whether or not they were on the Applicant's claim file is not material to the issue of whether the Public Body made every reasonable effort to ensure that the Applicant's personal information was complete when it made its decisions.

ii. Records from areas and systems within the Public Body

[para 103.] I have also said that the Public Body did not use the records from areas and systems within the Public Body (the "other records"), when making a decision that directly affects the Applicant. However, as the Applicant was concerned that the other records should have been on the claim file, I reviewed all the other records. Because all decisions, except the March 3, 1997 decision, were made on the basis of medical reports, I particularly compared all the medical reports in the other records with the medical reports on the Applicant's claim file. I found that the Applicant's claim file contained all the medical reports that I found in the other records.

[para 104.] Consequently, whether the other records were available to the decision-maker, and whether or not they were on the Applicant's claim file is not material to the issue of whether the Public Body made every reasonable effort to ensure that the Applicant's personal information was complete when it made its decisions. What is material is that the medical reports, which were used to make the decisions, were on the Applicant's claim file.

[para 105.] That leaves the investigation report, Dr. X.'s clinical notes, and the vocational rehabilitation records to be dealt with.

iii. Investigation report

[para 106.] The investigation report was in the case manger's desk. This is clear from the Public Body's admission and from the Public Body's June 23, 1997 memo from the case manager's supervisor to the manager of Claimant Services.

[para 107.] It is my view that the investigation report was in the case manager's desk from October 22, 1996, when it was completed, until some time before the June 23, 1997 memo was written.

[para 108.] However, even though the investigation report was not on the Applicant's claim file, I believe that the investigation report was made available to the CSRC and that the CSRC reviewed the investigation report before coming to its January 27, 1997 decision. There is evidence of two documented telephone calls, one on October 22, 1996 and another on October 29, 1996, from the CSRC, that reference the surveillance done on the Applicant.

[para 109.] Although the Public Body said that the investigation report was not relevant to the claim and the decision-making process, that does not mean that it was not used. It merely means that, after reviewing the investigation report, the Public Body decided it did not have a bearing on the Applicant's claim.

[para 110.] Even though the investigation report was not on the Applicant's claim file, it was available and the Public Body in fact used it in making the January 27, 1997 decision. Therefore, I find that the Public Body made every reasonable effort to ensure that the Applicant's personal information was complete when the Public Body made its January 27, 1997 decision.

iv. Dr. X.'s clinical notes

[para 111.] The Applicant and the Public Body dispute whether Dr. X.'s clinical notes were kept in the case manager's desk.

[para 112.] The Public Body obtained Dr. X.'s clinical notes on July 10, 1996. The following records are relevant to the issue of whether Dr. X.'s clinical notes were in the case manager's desk:

> (i) January 31, 1997 memo from the case manager's supervisor to the case manager, requesting that Dr. X.'s clinical notes be sent to the Medical Advisor or the Clinical Advisor for summary. At the inquiry, the case manager identified that memo as one of the memos

that was kept in the case manager's desk, instead of being placed on the Applicant's claim file.

(ii) February 3, 1997 Medical Advice Referral from the case manager, requesting a summary and review of Dr. X.'s clinical notes, which are indicated as being "flagged".

(iii) The Claim File Tracking History Display shows that the case manager had the Applicant's claim file on February 3, 1997, when the Medical Advice Referral was created.

(iv) The Claim File Tracking History Display also shows that the Applicant's claim file did not go to the Medical Advisor at any time between February 3, 1997 and April 16, 1997. On April 16, 1997, the Applicant's claim file went to the Medical Advisor on a matter unrelated to Dr. X.'s clinical notes.

(v) June 23, 1997 memo from the case manager's supervisor to the manager of Claimant Services. The memo sets out the records that were not on the Applicant's claim file. The list corresponds with the records the case manager identified as being in the case manager's desk, with one exception. The June 23, 1997 memo refers to "memos" in the plural, in addition to the January 31, 1997 memo, when discussing Dr. X.'s clinical notes. The June 23, 1997 memo goes on to say that the memos had been added to the Applicant's claim file, and that "[I]t is unfortunate that the Case Manager placed the memos in order of date rather than on the top of the file and as a result I am not sure if [the Applicant] has all this information."

(vi) June 26, 1997 memo from the case manager's supervisor to the case manager. The memo indicates that the supervisor and the manager of Claimant Services met with the Applicant on June 25, 1997 to give the Applicant a complete copy of the claim file, including the "missing documents" and the recently located vocational rehabilitation file. The memo goes on to require that the case manager walk the claim file to the Medical Department to have Dr. X.'s clinical notes summarized and interpreted. The memo also indicates that the policy is that no records are to be kept in desks.

(vii) June 26, 1997 electronic note from the case manager to the Medical Advisor. The case manager references the Medical Advice Referral of February 3, 1997. The Medical Advisor responds that he is unable to locate the referral, and requests that it be walked to him on Monday.

(viii) The Claim File Tracking History Display shows that, on June 26, 1997, the Applicant's claim file went to the Medical Advisor on the matter of Dr. X.'s clinical notes.

[para 113.] On balance, after having reviewed all the evidence and the records, I find that it is more likely than not that Dr. X.'s clinical notes were in the case manager's desk from February 3, 1997 until sometime before the June 23, 1997 memo was written. At the inquiry, the case manager confirmed that after June 23, 1997, there were no records in the case manager's desk.

[para 114.] My finding reflects my view that there is no other satisfactory explanation as to why it took five months until the Medical Advisor received the request to transcribe Dr. X.'s clinical notes.

[para 115.] The Applicant said that the medical records had an attached memorandum, which explained why the medical records were in the case manager's desk. I find that the attached memorandum was the February 3, 1997 Medical Advice Referral. My conclusion accords with the June 23, 1997 memo, which refers to "memos" in the plural, while also referring specifically to the January 31, 1997 memo. It is logical that the Medical Advice Referral would have been attached to Dr. X.'s clinical notes. A copy of the Medical Advice Referral is on the Applicant's claim file.

[para 116.] I have determined the time frame during which Dr. X.'s clinical notes were in the case manager's desk. That time frame was after the January 27, 1997 decision of the Public Body, but before the August 6, 1997 decision.

[para 117.] Consequently, I find that since the Applicant's personal information contained in Dr. X.'s clinical notes was available and was on the Applicant's claim file when the Public Body made its September 4, 1996, January 27, 1997 and August 6, 1997 decisions, the Public Body made every reasonable effort to ensure that the Applicant's personal information was complete when it made those decisions.

v. Vocational rehabilitation records

[para 118.] The vocational rehabilitation records were used only in the August 6, 1997 decision. As the vocational rehabilitation records were available and were on the Applicant's claim file when the Public Body made its August 6, 1997 decision, I find that the Public Body made every reasonable effort to ensure that the Applicant's personal information was complete when it made that decision.

d. Completeness and accuracy of personal information contained in the listed records

[para 119.] Only Dr. X.'s clinical notes and the vocational rehabilitation records are at issue.

i. Dr. X.'s clinical notes

[para 120.] Dr. X.'s clinical notes are of concern, as follows:

(i) many parts of Dr. X.'s handwritten clinical notes are illegible,

(ii) the case manager's interpretation of the clinical notes appears to be in error in several places (as compared with the medical transcription of the clinical notes), and other information appears to be omitted,

(iii) those errors have been repeated in the opinions given by individuals who reviewed only the case manager's interpretation of the clinical notes, and

(iv) the medical transcription of the clinical notes, completed on July 23, 1997, contains numerous blank spaces, reflecting the illegible handwriting that was not able to be transcribed.

[para 121.] I have already found that the Public Body used Dr. X.'s clinical notes to make decisions on September 4, 1996, January 27, 1997 and August 6, 1997.

[para 122.] The Public Body used the case manager's interpretation of Dr. X.'s clinical notes when it made the September 6, 1996 and January 27, 1997 decisions. Therefore, I find that the Public Body used inaccurate and incomplete personal information of the Applicant when it made the September 4, 1996 and January 27, 1997 decisions.

[para 123.] The Public Body used the medical transcription of Dr. X.'s clinical notes when it made the August 6, 1997 decision. Therefore, I find that the Public Body used incomplete personal information of the Applicant when it made the August 6, 1997 decision.

[para 124.] I have considered whether the Public Body made every reasonable effort to ensure that the Applicant's personal information contained in Dr. X.'s clinical notes was accurate and complete before using that personal information to make decisions, and conclude it did not.

[para 125.] The Public Body did not make "every reasonable effort" because it did not ensure that it obtained legible clinical notes. At the very least, it should have immediately obtained a complete medical transcription of the illegible clinical notes, contacting Dr. X. to translate anything that was illegible. At best, it should not have accepted illegible handwritten clinical notes that could be misinterpreted, but should have obtained a doctor's report. The Public Body did not have adequate procedures in place to ensure that the Applicant's personal information was accurate and complete when the Public Body used that personal information to make decisions affecting the Applicant.

[para 126.] In failing to obtain an accurate and complete transcription of Dr. X.'s clinical notes before using them to make the September 6, 1996, January 27, 1997 and August 6, 1997 decisions, the Public Body did not make every reasonable effort to ensure that the Applicant's personal information was accurate and complete before making those decisions.

ii. Vocational rehabilitation records

[para 127.] As documented by a December 30, 1996 memo of the Public Body, the Applicant complained of inaccuracies in the Applicant's personal information contained in the vocational rehabilitation records. That memo indicated that the inaccuracies were explained to the Applicant, and that the Applicant was informed that the inaccuracies would not have affected the Public Body's 1992 decision concerning the Applicant.

[para 128.] The Public Body used the vocational rehabilitation records in its August 6, 1997 decision. The December 30, 1996 memo would also have been available at the time that decision was made. Because both the memo explaining the inaccuracies and the vocational rehabilitation records were available when the Public Body made its August 6, 1997 decision, I find that the Public Body made every reasonable effort to

ensure that the Applicant's personal information was accurate and complete before making that decision.

e. My decision under section 34

[para 129.] As to the completeness of the listed records on the Applicant's claim file, I have found that the relevant records were either on the Applicant's claim file or available to the decision-maker when the Public Body made the September 6, 1996, January 27, 1997 and August 6, 1997 decisions. Therefore, I find that the Public Body made every reasonable effort to ensure that the Applicant's personal information was complete before making those decisions.

[para 130.] As to the completeness and accuracy of the personal information contained in the listed records, I have found that, in failing to obtain an accurate and complete transcription of Dr. X.'s clinical notes before using them to make the September 6, 1996, January 27, 1997 and August 6, 1997 decisions, the Public Body did not make every reasonable effort to ensure that the Applicant's personal information was accurate and complete before making those decisions.

[para 131.] I intend to order that the Public Body comply with its duty under section 34, in that I will order the Public Body to obtain an accurate and complete medical transcription of Dr. X.'s clinical notes before using that personal information to make any further decisions affecting the Applicant.

[para 132.] I note, with interest, that on June 30, 1997, the Public Body granted the Applicant a further hearing. The CSRC indicated that the hearing was granted because of the information that came to the Applicant's claim file after the previous hearing.

ISSUE D: Did the Public Body protect the Applicant's personal information, as required by section 36 of the Act?

1. General

[para 133.] Section 36 of the Act reads:

> *36 The head of a public body must protect personal information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or destruction.*

[para 134.] In general, a public body must protect personal information by making reasonable security arrangements appropriate to the sensitivity of the personal information. Extremely sensitive personal information, such as the medical information under the custody and control of the Public Body, requires more stringent protection arrangements.

[para 135.] The Applicant complains that the Public Body did not protect the Applicant's personal information. As a result, the Applicant says personal information was accessed, used, collected, disclosed and destroyed, contrary to the Act.

2. Unauthorized access

[para 136.] Unauthorized access to personal information includes (i) access by the public, where there is no right to access; (ii) access by a public body's employees, if those employees do not need to see the personal information in the course of their duties; and (iii) situations in which information is stored in an unsecured manner such that someone can obtain unauthorized access.

[para 137.] In this case, access by the public is not at issue.

[para 138.] The Applicant is concerned that the Applicant's personal information was seen, unnecessarily, by a number of the Public Body's employees in various areas of the Public Body.

[para 139.] I have reviewed the Public Body's Claim File Tracking History Display, and I find no evidence of unauthorized access by the Public Body's employees, including the Medical Advisors.

[para 140.] However, the Public Body's evidence is that only about 300 of its 1300 employees have training with respect to the protection of personal information. I would say that this limited training is cause for concern.

[para 141.] The records kept in the case manager's desk, and the vocational rehabilitation records kept, without anyone's apparent knowledge, in a storage area, are also matters for concern.

[para 142.] Section 36 incorporates "fair information practices". One of the principles of fair information practices is to identify the person(s) within an organization who has the responsibility for protecting personal information. That person is accountable for carrying out the security

arrangements to protect the personal information from unauthorized access, among other things.

[para 143.] In the Public Body's case, the fact that the Applicant's personal information was elsewhere than on the claim file tells me that either there is no one within the Public Body who is accountable for protecting personal information, or the person who is accountable for carrying out the security arrangements to protect personal information is not performing the duty. In either case, the Public Body is not complying with section 36.

[para 144.] I find that, with regard to the records kept in the case managers desk and the vocational rehabilitation records kept, without anyone's apparent knowledge, in storage, the Public Body breached its duty to protect the Applicant's personal information by not making reasonable security arrangements against the risk of unauthorized access.

3. Unauthorized collection

a. General

[para 145.] Unauthorized collection means collecting personal information for purposes other than those permitted by section 32 of the Act.

[para 146.] Section 32 of the Act is a limitation on the collection of personal information. As Commissioner, I perform a "watchdog" function to ensure that public bodies do not go beyond what is permitted by section 32. Section 32 reads:

> *32 No personal information may be collected by or for a public body unless*
>
> *(a) the collection of that information is expressly authorized by or under an Act 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.*

[para 147.] Section 33(1) of the Act goes on to list the circumstances under which personal information may be collected other than directly from the individual the information is about. Section 33(1)(a)(i) and (ii) of the Act are relevant, and read:

> *33(1) A public body must collect personal information directly from the individual the information is about unless*
>
> > *(a) another method of collection is authorized by*
> >
> > > *(i) that individual,*
> > >
> > > *(ii) another Act or a regulation under another Act.*

[para 148.] The Public Body's legislative authority for the collection of personal information is contained in section 31 and section 29 of the *Worker's Compensation Act*. In my view, those are legislated safeguards to prevent the unauthorized collection of an applicant's personal information.

[para 149.] Section 31 of the *Workers' Compensation Act* expressly authorizes the collection of personal information, as permitted by 32(a) of the Act. Section 31 reads:

> *31 The Board may require from any person entitled to compensation, whether a worker or dependant, particulars of his place of residence, address, and other information relative to the disability and compensation, that it considers necessary, and pending the receipt of those particulars the Board may withhold compensation payments.*

[para 150.] Under section 31 of the *Workers' Compensation Act*, the Public Body is expressly authorized to collect personal information related to the worker's disability and compensation of that disability. The word "and" in "disability *and* [my emphasis] compensation" is conjunctive; the information collected must relate to both the "disability" and the "compensation" of the disability.

[para 151.] The clause "that it considers necessary" refers to the collection of information relative to the disability and compensation.

That clause implies that the Public Body has discretion to decide what information is necessary, relative to the disability and compensation.

[para 152.] I must give the Public Body considerable latitude in deciding that the collection of personal information is necessary, relative to the disability and compensation. Provided this determination is not patently unreasonable, it is not likely I would interfere. However, I cannot defer entirely to the Public Body because the Act overrides the *Workers' Compensation Act*, and the Act compels me to look at the basis on which a public body collects personal information.

[para 153.] In the present case, I will not interfere with the Public Body's decision under section 31 of the *Workers' Compensation Act* if the Public Body establishes that it had a reasonable basis for deciding that the collection of the personal information was necessary, relative to the disability and compensation.

[para 154.] Section 29(1)(a) of the *Workers' Compensation Act* is also relevant and meets the requirements of section 33(1)(a)(ii) of the Act. Section 29(1) generally and section 29(2) are both of interest. Those sections read:

> *29(1) A physician who attends an injured worker shall*
>
> > *(a) forward a report to the Board*
> >
> > > *(i) within 2 days after the date of his first attendance on the worker if he considers that the injury to the worker will or is likely to disable him for more than the day of the accident or that it may cause complications that may contribute to disablement in the future, and*
> > >
> > > *(ii) at any time when requested by the Board to do so,*
> >
> > *(b) advise the Board when, in his opinion, the worker will be or was able to return to work, either in his report referred to in clause (a)(i) or in a separate report forwarded to the*

Board not later than 3 days after the worker was, in his opinion, so able, and

(c) without charge to the worker, give all reasonable and necessary information, advice and assistance to the worker and his dependants in making a claim for compensation and in furnishing any certificates and proofs that are required in connection with the claim.

(2) The Board shall pay an attending physician fees prescribed by the regulations for a report under this section.

[para 155.] The Applicant complains that the Public Body has no safeguards in place to prevent the unauthorized collection of an applicant's medical information. As a result, the Public Body collected the following personal information about the Applicant, without authorization:

(i) personal life history, which is contained in the psychological/psychiatric reports

(ii) a newspaper article/editorial quoting the Applicant

(iii) medical information predating the Applicant's 1991 compensable injury

(iv) February 15, 1996 chest exam report and laboratory discharge report (date stamped by the Public Body as July 31, 1996 and August 14, 1996, respectively)

(v) those parts of Dr. X.'s clinical notes unrelated to the Applicant's compensable injury

i. Personal life history

[para 156.] The Applicant complains that the Public Body collected the Applicant's personal life history, which was contained in psychological/psychiatric reports.

[para 157.] The records indicate that on March 15, 1996, the Applicant requested that the Public Body determine whether the Applicant's psychological/psychiatric condition was the result of the Applicant's

compensable injury. On June 14, 1996, the Applicant signed a consent to have physicians and other persons release psychological and psychiatric reports to the Public Body. The Public Body proceeded to collect those reports. A number of those reports contained the Applicant's personal life history.

[para 158.] In my view, the persons who wrote those reports were justified in thinking that the Applicant's personal life history was relevant in determining the causes of any psychological/psychiatric condition the Applicant might have. The Applicant's personal life history was also relevant for the Public Body in determining whether the Applicant's personal life history or the compensable injury resulted in the Applicant's psychological/psychiatric condition.

[para 159.] Therefore, I am satisfied that the Public Body had a reasonable basis for deciding that the information about the Applicant's personal life history was necessary to determine whether the Applicant's personal life history or the compensable injury resulted in the Applicant's psychological/psychiatric condition.

[para 160.] I find that, under section 31 of the *Workers' Compensation Act,* the Public Body was authorized to collect the Applicant's personal life history contained in the psychological/psychiatric reports. Therefore, the Public Body complied with section 32(a) of the Act. The Public Body also complied with section 33(1)(a)(i) of the Act.

ii. Newspaper article/editorial

[para 161.] The Public Body collected a newspaper article/editorial quoting the Applicant, and put it on the Applicant's claim file. The Public Body did not collect that personal information from the Applicant.

[para 162.] The newspaper article/editorial is not "information relative to the disability and compensation" and, therefore, does not meet the requirements of section 31 of *the Workers' Compensation Act*. Therefore, the Public Body breached section 32(a) and section 33(1) of the Act when it collected that personal information and put it on the Applicant's claim file.

[para 163.] I recognize that other provisions of the *Workers' Compensation Act* or section 32(c) of the Act may allow the Public Body to collect that personal information for other purposes, but not for the purpose of putting it on the Applicant's claim file.

iii. Medical information predating 1991

[para 164.] The Public Body maintains that pre-accident medical history is relevant for the purpose of deciding whether there is anything affecting an applicant's compensable injury, since the Public Body is responsible for compensating only for the effects of a work-related accident.

[para 165.] I agree that, under section 31 of the *Workers' Compensation Act,* the Public Body may well have a reasonable basis for deciding that the collection of pre-accident medical history is necessary, relative to the disability and compensation. However, pre-accident medical history must relate to *the disability and compensation of the disability* [my emphasis], as provided by section 31.

[para 166.] In my view, the Public Body collected some pre-1991 medical history that does not relate to the disability and compensation of the disability. That medical history is contained in Dr. X.'s clinical notes, discussed below.

iv. Chest exam report and laboratory discharge report

[para 167.] The February 15, 1996 chest exam report and laboratory discharge report (date stamped by the Public Body as July 31, 1996 and August 14, 1996, respectively), obtained by the Public Body, are part of a hospital admittance report. The hospital admittance report of February 15, 1996 relates to the Applicant's psychological/psychiatric condition. As such, the entire report, including the chest exam report and the laboratory discharge report, were collected by the Public Body, as permitted under section 31 and section 29(1)(a) of *the Workers' Compensation Act*. Therefore, the Public Body complied with section 32(a) and 33(1)(a)(ii) of the Act.

v. Dr. X.'s clinical notes

[para 168.] The Applicant complains that the Public Body collected Dr. X.'s clinical notes, and much of the personal information contained in them was unrelated to the Applicant's compensable injury.

[para 169.] The background to the Public Body's collection of Dr. X.'s clinical notes is this. On June 26, 1996, the Public Body sent a letter to Dr. X., asking for specific chart notes relating to treatment of the Applicant for psychological/psychiatric problems, as well as "…any other visits either prior to or after the date of accident where you treated the worker for psychological/psychiatric problems."

[para 170.] On July 10, 1996, Dr. X.'s receptionist phoned the case manager to say that all the Applicant's patient chart notes, from 1981 on, would be sent to the Public Body. There is no evidence that the case manager objected to having all the patient chart notes sent.

[para 171.] I have reviewed Dr. X.'s clinical notes, which span a 15-year period during which Dr. X. was the Applicant's family physician. A number of the entries appear to be unrelated to the Applicant's compensable injury and psychological/psychiatric condition. There is no reasonable basis to say that that personal information is necessary, relative to the disability and compensation of the disability.

[para 172.] Furthermore, the case manager identified and summarized the relevant personal information in the case manager's August 2, 1996 file summary. By implication, the personal information that was not summarized was not relevant.

[para 173.] The Public Body argues that the "whole person concept" entitles the Public Body to collect the personal information that it collected. However, the Public Body's authority to collect that personal information is limited by section 31 of the *Workers' Compensation Act*. I refer the Public Body to its own draft policy, "Claim File Management - Relevancy", in that regard.

[para 174.] Furthermore, most of the Public Body's references to the "whole person concept" are related to a determination of chronic pain. On March 3, 1997, the Public Body summarily rejected the Applicant's claim to entitlement for chronic pain/chronic pain syndrome, on the basis of the CSRC's decision, not on the basis of the "whole person concept".

[para 175.] Because that personal information was not relative to the disability and compensation under section 31 of *the Workers' Compensation Act*, the Public Body was not authorized to collect it (within the meaning of the Act), and was therefore in breach of section 32(a) of the Act.

[para 176.] The Public Body also argues that section 32 of the Act requires some positive act on the part of the Public Body in collecting personal information. The Public Body maintains that receipt of unsolicited personal information should not be equated with collection. The Public Body says that it should not be found in breach of section 32 merely because a physician, Dr. X. in this case, sent unsolicited personal information to the Public Body, in the form of the entire patient chart.

[para 177.] In Order 98-001, I dealt with the issue of a public body's collection of personal information. It is implicit in Order 98-001 that it does not matter how a public body comes to have personal information; any manner of getting personal information is "collection" for the purposes of the Act. Therefore, I do not accept the Public Body's argument that it must actively "collect" personal information for that to be "collection" under section 32 of the Act.

[para 178.] Furthermore, this was not a case of personal information collected inadvertently. In its June 26, 1996 letter, the Public Body was reasonably specific about the personal information it requested, and the Public Body was in a position to refuse to accept Applicant's entire patient chart when Dr. X.'s receptionist said she would send it. The Public Body did not refuse, and therefore collected personal information that it was not permitted to collect under the Act.

b. My decision under unauthorized collection

[para 179.] Fair information practices require that a public body establish not only the necessity for and the relevance of the personal information collected, but who should determine necessity and relevance.

[para 180.] The Public Body's evidence is that its case managers determine necessity and relevance. According to the Public Body, there are approximately 150 case managers who perform this role. Those persons make decisions as to entitlement to compensation.

[para 181.] A decision-maker has the right to make the initial determination about the necessity for and the relevance of the information the decision-maker will use to make a decision. But a decision maker must be bound by the law under which the decision is to

be made. As to the collection of personal information to make the decision, that law is section 31 of the *Workers' Compensation Act,* which establishes the necessity for and the relevance of personal information collected.

[para 182.] The evidence is that the case manager determined the relevance of the personal information, as set out in the August 2, 1996 file summary. It follows that anything not in that file summary was not relevant in the case manager's view.

[para 183.] I note that the irrelevant personal information was just simply left on the file. There does not appear to be a process in place for removing that irrelevant personal information. I again refer to the Public Body's draft policy, "Claim File Management - Relevancy", in that regard.

[para 184.] Consequently, I am left with the inescapable conclusion that the Public Body did not have reasonable safeguards in place to protect against the unauthorized collection (within the meaning of the Act) of the Applicant's personal information. Therefore, I find that the Public Body breached its duty to protect the Applicant's personal information by not making reasonable security arrangements against unauthorized collection.

[para 185.] In my view, the Public Body needs to consider what personal information it is collecting, and why, as well as who should have the responsibility to ensure that personal information is collected in compliance with the Act. The Public Body needs a policy that complies not only with its own legislation, but also with the Act.

[para 186.] I recognize that the Public Body is not solely responsible for unauthorized collection of personal information. The medical profession must take some responsibility, in that physicians may very well be sending the Public Body more than what is required under the *Workers' Compensation Act*. Although the medical profession is not subject to the Act, physicians have a professional responsibility to keep confidential a patient's personal information, and not to blindly hand over a patient's entire file, just because it might be administratively convenient to do so. Physicians must exercise their professional responsibility on behalf of patients when responding to the Public Body.

[para 187.] To comply with the Public Body's collection obligations under the Act and under the *Workers' Compensation Act*, I propose the following:

(i) The Public Body must be as clear and specific as possible as to the personal information it asks a physician (or other professional person) to provide.

(ii) The physician should be selective, but responsive, in what he or she sends to the Public Body.

(iii) If a physician sends the Public Body more than what the Public Body asked for, the Public Body may *reasonably* [my emphasis] rely on the physician's judgment that everything sent is relevant to the disability and compensation.

(iv) However, if the physician sends some personal information that the Public Body finds is clearly irrelevant, the Public Body should put the irrelevant personal information in a separate file, so that it is not improperly used. The Public Body should retain that separate personal information until the Public Body's process (i.e., determining compensation and deciding related appeals) is complete, so that the personal information will be available if reference has to be made to it. At the appropriate time after the Public Body's process is complete, the Public Body should destroy that separate personal information.

4. Unauthorized use

a. General

[para 188.] Unauthorized use means using personal information for a purpose other than one allowed under section 37 of the Act.

[para 189.] Section 37(a) reads:

> *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…*

[para 190.] Section 39(a) of the Act is also relevant. That section reads:

> *39 For the purposes of sections 37(a) and 38(b)* [sic]*, 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.

[para 191.] The Applicant's complaints are that:

(i) The Public Body used the psychiatric reports to determine the Applicant's entitlement to compensation for chronic pain/chronic pain syndrome, contrary to the Public Body's written policy.

(ii) The Public Body used the case manager's and Medical Advisors' opinions about the Applicant personally.

(iii) In a November 19, 1996 report to the CSRC, the Medical Advisor used the Applicant's personal life history, without authorization.

i. Psychiatric reports

[para 192.] The Public Body did not use the psychiatric reports in deciding that the Applicant was not entitled to compensation for chronic pain/chronic pain syndrome.

ii. Personal opinions

[para 193.] The Applicant did not refer specifically to any case manager's opinion about the Applicant personally, but did refer specifically to an August 22, 1996 opinion of a Medical Advisor, about the Applicant personally.

[para 194.] However, it is part of the employment responsibilities of case managers and Medical Advisors to render opinions. Carrying out those employment responsibilities is not unauthorized use of the Applicant's personal information.

iii. Personal life history

[para 195.] The Applicant refers specifically to a November 19, 1996 report to the CSRC, in which the Medical Advisor who wrote the report used the Applicant's personal life history, without authorization.

[para 196.] The Medical Advisor was reporting to the CSRC, as requested, prior to the CSRC coming to its decision. The Medical Advisor and the members of the CSRC are employees of the Public Body. Both the Medical Advisor and the CSRC had reviewed the Applicant's entire claim file, which contained the Applicant's personal life history. The Medical Advisor was summarizing the file for the CSRC. In my view, that summary by the Medical Advisor, an employee of the Public Body, for the members of the CSRC, who are other employees of the Public Body, for the purposes of the CSRC's decision, is not an unauthorized use of the Applicant's personal life history. This is so even though the Applicant had withdrawn the appeal of psychological/psychiatric condition before the CSRC hearing.

b. My decision under unauthorized use

[para 197.] The Public Body did not use the Applicant's personal information contrary to section 37 of the Act. I also do not find any evidence that the Public Body breached its duty to protect the Applicant's personal information by not making reasonable security arrangements against unauthorized use.

5. Unauthorized disclosure

a. General

[para 198.] Unauthorized disclosure means disclosing personal information in ways other than those allowed under section 38 of the Act.

[para 199.] The relevant portions of section 38(1) of the Act read:

> *38(1) A public body may disclose personal information only*
>
> > *...*
> > *(b) for the purpose for which the information was collected or compiled or for a use consistent with that purpose,*
> >
> > *(c) if the individual the information is about has identified the information and consented, in the prescribed manner, to the disclosure,*
> >
> > *(d) for the purpose of complying with an enactment of Alberta or Canada or with a*

treaty, arrangement or agreement made under an enactment of Alberta or Canada,

(e) for any purpose in accordance with an enactment of Alberta or Canada that authorizes or requires the disclosure.

[para 200.] Section 39 is relevant to section 38(1)(b). Section 39 reads:

39 For the purposes of sections 37(a) and 38(b) [sic], *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.

[para 201.] The Applicant complains that:

(i) The Public Body disclosed the Applicant's medical information to an independent medical specialist, who reported to the CSRC on December 23, 1996. That disclosure was without authorization.

(ii) In a November 19, 1996 report to the CSRC, the Medical Advisor disclosed the Applicant's personal life history, without authorization.

(iii) The Public Body disclosed the Applicant's medical information to the employer, without authorization.

(iv) The case manager disclosed the Applicant's personal information to Dr. X.'s receptionist, without authorization.

(v) The Public Body disclosed, without authorization, the Applicant's personal life history, contained in the psychological/psychiatric reports, and other medical information, to Income Security Programs, administered by Human Resources Development Canada under the *Canada Pension Plan*.

i. Disclosure to independent medical specialist

[para 202.] The Public Body says it disclosed the Applicant's medical information to an independent medical specialist, who reported to the CSRC on December 23, 1996. The Public Body says that disclosure of that personal information was imperative for a proper analysis by the independent medical specialist, and is conducted under section 141(2) of the *Workers' Compensation Act*. That section reads:

> *141(2) No member or officer or employee of the Board shall divulge information respecting a worker or the business of an employer that is obtained by him in his capacity as a member, officer or employee unless it is divulged under the authority of the Board to the persons directly concerned or to agencies or departments of the Government of Canada, the Government of Alberta or another province.*

[para 203.] I would say that the independent medical specialist is not a "person directly concerned" for the purposes of section 141(2) of the *Workers' Compensation Act*.

[para 204.] In my view, a "person directly concerned" is someone who would have standing before a decision-maker. As examples, a worker, a worker's dependents, or an employer would be "persons directly concerned" when the Public Body makes a decision concerning entitlement to compensation.

[para 205.] However, I believe that section 38(1)(b) of the Act permits the Public Body to disclose the Applicant's personal information to an independent medical specialist. That disclosure would be consistent with the purpose of determining eligibility for compensation. Furthermore, section 39 of the Act is met because the disclosure has a reasonable and direct connection to the purpose of determining eligibility, and is necessary for performing the statutory duties of the Public Body to determine compensation under the *Workers' Compensation Act*.

[para 206.] Therefore, the Public Body did not disclose the Applicant's personal information to the independent specialist, without authorization.

ii. Disclosure to CSRC

[para 207.] The Medical Advisor and the members of the CSRC are employees of the Public Body. Both the Medical Advisor and the CSRC

have access to the Applicant's claim file containing the Applicant's personal information for decision-making purposes. Therefore, for the purposes of the Act, there cannot be unauthorized disclosure of the Applicant's personal information from one to the other, when they both have the same information available to them for decision-making purposes.

iii. Disclosure to employer

[para 208.] The Public Body acknowledged that there is the potential for information to be disclosed, without authorization, to an employer, and gave evidence that there have been two situations in which that occurred. Those situations did not relate to the Applicant.

[para 209.] The Applicant did not provide any evidence of unauthorized disclosure to the Applicant's employer, nor did I find any evidence of unauthorized disclosure.

iv. Disclosure to Dr. X.'s receptionist

[para 210.] The Applicant complained that the case manager disclosed the Applicant's personal information, without authorization, when the case manager advised Dr. X.'s receptionist to call the police and get a restraining order. The receptionist had phoned the case manager after the Applicant had allegedly behaved violently in Dr. X.'s office.

[para 211.] In my view, advising the receptionist to call the police and get a restraining order is not unauthorized disclosure of the Applicant's personal information. Instead, it is advice concerning the legal remedies available to restrain a person who may be behaving violently.

[para 212.] Therefore, I find that there is no unauthorized disclosure of the Applicant's personal information here.

v. Disclosure to Income Security Programs, administered by Human Resources Development Canada under the Canada Pension Plan

[para 213.] The Applicant says that the Public Body did not protect the Applicant's personal information from unauthorized disclosure to persons administering the *Canada Pension Plan*. The Applicant raises the issue as to who, within the Public Body, has responsibility to ensure proper disclosure.

[para 214.] The disclosure under the *Canada Pension Plan* is authorized under section 38(1)(c), (d) and (e) of the Act. However, I believe that those sections, and particularly section 38(1)(e), authorize the disclosure of only that personal information required under the *Canada Pension Plan*, and nothing more.

[para 215.] The relevant portion of the *Canada Pension Plan*, R.S.C. 1985, c. C-8, reads:

> *42(2) For the purposes of this Act,*
>
> > *(a) a person shall be considered to be disabled only if he is determined in the prescribed manner to have a severe and prolonged mental or physical disability.*

[para 216.] The relevant portion of the *Canada Pension Plan Regulations*, C.R.C. 1978, c. 385 reads:

> *68(1) Where an applicant claims that he or some other person is disabled within the meaning of the Act, he shall supply the Minister with the following information in respect of the person whose disability is to be determined:*
>
> > *(a) a report of any physical or mental impairment including*
> >
> > > *(i) the nature, extent and prognosis of the impairment,*
> > >
> > > *(ii) the findings upon which the diagnosis and prognosis were made,*
> > >
> > > *(iii) any limitation resulting from the impairment, and*
> > >
> > > *(iv) any other pertinent information, including recommendations for further diagnostic work or treatment, that may be relevant.*

[para 217.] On October 5, 1997, the Applicant signed a *Canada Pension Plan* "Authorization to Disclose Information/Consent for Medical Evaluation". The relevant portions of that authorization read:

> *I hereby authorize...any Worker's Compensation Board...to disclose information contained in their records to Income Security Programs, for the purpose of determining whether I am disabled under the terms of the Canada Pension Plan*
>
> *I understand that this information is essential to determine that I have or continue to have a severe and prolonged mental or physical disability.*

[para 218.] Based on the above wording, particularly "for the purpose of", and "essential to determine", I understand the authorization to be authorizing the disclosure of the information set out in section 68(1) of the Regulations to the *Canada Pension Plan*.

[para 219.] The letter sent from Income Security Programs to the Public Body reads, in part:

> *We are determining whether* [the Applicant] *is eligible for Canada Pension Plan disability benefits.*
>
> *To help us, please provide copies...of the following information* ***from*** *1991* ***to*** *present:*
>
> - *Assessments*
> - *Evaluation of functional capacity*
> - *Worksite studies*
> - *Consultant reports, or the names and addresses of consultants who can provide additional reports*
> - *Vocational rehabilitation reports*
> - *A summary of benefit status, including the type of benefits and, if applicable, the percentage rating*

[para 220.] The letter from Income Security Programs to the Public Body does not state whether Income Security Programs is determining disability benefits for a physical or mental disability.

[para 221.] I have reviewed all the records provided to Income Security Programs. All of the records are dated from 1991 to the present, except for the following:

(i) One undated record from a chiropractor. However, I have traced that record to the date of the Applicant's initial injury in 1991. Therefore, I find that that record complies with the "1991 to present" requirement set out in the letter from Income Security Programs.

(ii) One hospital admission record dated July 27, 1989. That record is not within the "1991 to present" category. However, it concerns the Applicant's mental state, and so would comply with section 68(1)(a) of the Canada Pension Plan Regulations.

(iii) Dr. X.'s clinical notes from April 16, 1981 to June 28, 1990, that are unrelated to the Applicant's compensable injury and psychological/psychiatric condition.

[para 222.] Therefore, I find that those portions of Dr. X.'s clinical notes that are unrelated to the Applicant's compensable injury and psychological/psychiatric condition, from April 16, 1981 to June 28, 1990, were disclosed without authorization.

[para 223.] Most of the records sent to Income Security Programs are assessments, consultant reports, or evaluations of functional capacity concerning the Applicant's disability. However, the following records are not, and should not have been disclosed:

(i) August 11, 1997 letter to the Public Body from Dr. Y.

(ii) parts of Dr. X.'s clinical notes that are unrelated to the Applicant's compensable injury and psychological/psychiatric condition

(iii) May 22, 1997 letter from Dr. Y. to Dr. Z.

(iv) October 27, 1996 diagnostic imaging report for pneumonia

(v) most of the case manager's three file summaries (August 28, 1995, August 2, 1996, and November 20, 1997), unrelated to assessments, consultant reports, evaluations of functional capacity, and vocational rehabilitation)

b. My decision under unauthorized disclosure

[para 224.] As set out above, the Public Body disclosed some of the Applicant's personal information, without authorization.

[para 225.] I have said before that section 36 incorporates fair information practices, and that one of the principles is to identify the person(s) within the organization who has the responsibility for protecting the personal information against unauthorized disclosure, among other things.

[para 226.] The Public Body says that, as set out in its Procedure Number 20.2, the Public Body's Chief Medical Advisor is responsible for approving the release of medical reports for the purpose of the "standard" medical information package that the Public Body sends to Income Security Programs, administered by Human Resources Development Canada under the *Canada Pension Plan*. Procedure Number 20.2 also says that the case manager or adjudicator provides only a cover letter to the medical information package.

[para 227.] I have reviewed what was in the Applicant's "standard" medical information package, and found irrelevant personal information supplied by both the Public Body's medical department and the case manager. As a result, I have concerns that "standard" may be the operative word for what gets into these medical information packages. Furthermore, if the case manager gets to add additional material (file summaries) to the medical information package after it has been prepared, I question whether the person responsible for checking to determine whether there is unauthorized disclosure (the Chief Medical Advisor) is performing that duty.

[para 228.] Although the Public Body's Procedure Number 20.2 appears to have set up a procedure to follow to prevent unauthorized disclosure of personal information, the Public Body does not appear to be following its own procedure. Therefore, I find that the Public Body breached its duty to protect the Applicant's personal information by not making reasonable security arrangements against unauthorized disclosure.

6. Unauthorized destruction

[para 229.] Although the Applicant believes that vocational rehabilitation memos were destroyed without authorization, there is no evidence that the Public Body breached its duty to protect the Applicant's personal information by not making reasonable security arrangements against unauthorized destruction.

V. ORDER

[para 230.] I make the following Order under section 68(3) of the Act.

Issue A: Assisting and responding to the Applicant (section 9(1))

[para 231.] The Public Body made every reasonable effort to assist the Applicant, and to respond to the Applicant openly, accurately and completely, as required by section 9(1) of the Act.

Issue B: Responding to the Applicant within the time limit (section 10 and section 13)

[para 232.] The Public Body did not comply with the time limit for responding to the Applicant, as required by section 10 and as permitted by section 13 of the Act. However, the Public Body responded to the Applicant before the inquiry. Therefore, on the particular facts of this case, I do not find it necessary to order that the Public Body comply with its duty to respond to the Applicant, as the Public Body has already responded.

Issue C: Ensuring accurate and complete personal information of the Applicant before making a decision (section 34)

[para 233.] As to the completeness of the listed records on the Applicant's claim file, the relevant records were either on the Applicant's claim file or available to the decision-maker when the Public Body made the September 6, 1996, January 27, 1997 and August 6, 1997 decisions. Therefore, I find that the Public Body made every reasonable effort to ensure that the Applicant's personal information was complete before making those decisions.

[para 234.] As to the accuracy and completeness of the personal information contained in the listed records, the Public Body failed to obtain an accurate and complete transcription of Dr. X.'s clinical notes before using them to make the September 6, 1996, January 27, 1997 and August 6, 1997 decisions. Therefore, the Public Body did not make every reasonable effort to ensure that the Applicant's personal information was accurate and complete before making those decisions.

[para 235.] I order that the Public Body obtain an accurate and complete medical transcription of Dr. X.'s clinical notes before using that personal information to make any further decisions affecting the Applicant.

Issue D: Protecting the Applicant's personal information (section 36)

[para 236.] The Public Body did not protect the Applicant's personal information by making reasonable security arrangements against

unauthorized access, collection and disclosure, as provided by section 36 of the Act.

[para 237.] I order that the Public Body make reasonable security arrangements to protect the Applicant's personal information against further risk of unauthorized access, collection and disclosure.

[para 238.] I also order the Public Body to stop collecting and disclosing the Applicant's personal information, without authorization.

[para 239.] As to the Applicant's personal information collected without authorization, under section 68(4) of the Act, I order that the Public Body:

> (i) put that personal information in a separate file, so that it is not improperly used, and
>
> (ii) retain that separate personal information until the Public Body's process (i.e., determining the Applicant's entitlement to compensation and deciding related appeals) is complete, so that the personal information will be available if reference has to be made to it.

[para 240.] I further order that, at the appropriate time after the Public Body's process is complete, the Public Body destroy that separate personal information.

[para 241.] I order that the Public Body notify me, in writing, within 30 days of receiving a copy of this Order, that the Public Body has complied with this Order, other than that part of the Order concerning the destruction of the Applicant's personal information kept in the separate file.

[para 242.] I further order that the Public Body notify me when it has destroyed that separate personal information.

****

[para 243.] This Order is the decision of Robert C. Clark, Information and Privacy Commissioner, who heard the parties to Review Number 1288. Because Robert C. Clark is presently not available to sign this Order, Frank J. Work, Acting Information and Privacy Commissioner, has signed the Order.

Frank J. Work
Acting Information and Privacy Commissioner