ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2006-018

December 17, 2007

WORKERS' COMPENSATION BOARD

Case File Number 3342

Office URL: www.oipc.ab.ca

Summary: The Complainant, a recipient of benefits through the Workers' Compensation Board (the "Public Body"), complained that the Public Body collected, used and disclosed her personal information, contrary to Part 2 of the *Freedom of Information and Protection of Privacy Act* (the "Act"). She also complained that the Public Body failed to make every reasonable effort to ensure that her personal information was accurate and complete.

The Complainant was the subject of an investigation on the basis that she was misrepresenting the extent of her disability. The Public Body obtained her legal land description and conducted video surveillance. The Adjudicator found that the collection of the legal land description, and the Complainant's personal information on the surveillance videotape and in a video surveillance report, was for the authorized purposes of law enforcement under section 33(b) of the Act.

The Adjudicator found that the information on the videotape and in the report was collected directly from the Complainant, and that although she was not informed about it, this was permitted, under section 34(3) of the Act, on the basis that informing her could reasonably be expected to result in the information collected being inaccurate. As the collection of the legal land description was for the purposes of law enforcement, the Adjudicator found that the indirect manner of its collection from a third party was authorized under section 34(1)(g) of the Act.

The information on the videotape and in the accompanying report was initially used by the Public Body to determine whether the Complainant was misrepresenting her disability and therefore was or was not entitled to benefits. As the use was for the purpose for which the information was collected, the Adjudicator found that it was authorized under section 39(1)(a) of the Act. As the videotape and report were once relevant to the adjudication of the Complainant's claim, the Adjudicator found that they may be retained by the Public Body.

The Public Body subsequently sent the video surveillance report to a physician for the purpose of ascertaining the Complainant's current medical status. As the purpose of the use and disclosure at that time was not the same as or consistent with the original collection of the information for law enforcement purposes, the Adjudicator found that they were not authorized under sections 39(1)(a) or 40(1)(c) of the Act.

The Adjudicator also found that disclosure of the video surveillance report to the physician was not necessary to enable the Public Body to carry out an authorized purpose in a reasonable manner under section 40(4) of the Act. If an individual is no longer under suspicion of misrepresenting his or her disability, that suspicion should no longer be disclosed. Further, other clients of the program undergo medical status examinations without a surveillance report being sent to the examining physician, and physicians already receive medical reports and other information for background.

The Adjudicator found that some of the Complainant's other personal information, such as financial information and family status, was also disclosed to a physician contrary to the Act, as it was not for an authorized purpose under section 40(1) of the Act.

The Complainant alleged that the Public Body improperly disclosed her personal information to the Calgary Police Service (the "CPS") because the CPS was not actually her employer. The Adjudicator was unable to conclude whether the CPS was the Complainant's employer for the purpose of the program administered by the Public Body. Regardless, he found that the Public Body disclosed the Complainant's personal information to the CPS, in two instances, contrary to the Act. One instance was when the Public Body disclosed the date, nature and results of the Complainant's past medical appointments, which information the Adjudicator found was not reasonably necessary for the purpose of confirming the date of the initial workplace injury. The other instance was when the Public Body disclosed the Complainant's entire medical evaluation report, which the Adjudicator found contained information that was not reasonably necessary for the purpose of developing a plan for her to return to work.

In the absence of evidence of other specific instances of disclosure, or evidence of what was disclosed orally, the Adjudicator was unable to conclude whether there was unauthorized disclosure between the Public Body and the CPS at other times.

In most instances raised by the Complainant, the Adjudicator found that the Public Body did not fail to make every reasonable effort to ensure that the Complainant's personal information was accurate and complete under section 35(a) of the Act. Although the

Public Body used certain information to make decisions that directly affected the Complainant, the Adjudicator did not have sufficient evidence to verify the accuracy of the personal information, such as where facts were disputed. Moreover, the Public Body did not have a duty to ensure the accuracy of certain statements made by third parties, except to ensure that they were accurately recorded.

In one instance, the Public Body inaccurately indicated, to a physician who evaluates her medical status, the Complainant's hobbies and interests as reflected in a résumé. The Adjudicator found that the information was used to make a decision directly affecting the Complainant and that, because the Public Body did not verify the information by contacting her or obtaining the résumé, it failed to make every reasonable effort to ensure that the information was accurate and complete under section 35(a) of the Act.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(e), 1(h)(ii), 1(n), 17, 17(2)(c), 33, 33(a), 33(b), 33(c), 34, 34(1), 34(1)(a)(ii), 34(1)(g), 34(1)(k)(ii), 34(2), 34(3), 35, 35(a), 35(b), 36, 39, 39(1)(a), 39(4), 40, 40(1), 40(1)(b), 40(1)(c), 40(1)(e), 40(1)(f), 40(1)(l), 40(1)(q), 40(1)(r)(i), 40(4), 41, 41(a), 41(b), 53(1)(a), 72 and 72(3)(e); *Workers' Compensation Act*, R.S.A. 2000, c. W-15, s. 18(2), 39(1), 147(2), 151.1(1) and 152.

Authorities Cited: AB: Orders 96-007, 96-019, 96-021, 97-020, 98-002, 99-010, F2003-017, F2006-019 and F2006-026; Reports 99-IR-002, 2000-IR-007, 2001-IR-008 and F2003-IR-005. **CAN:** PIPEDA Case Summary #269. **BC:** Order F07-18.

I. BACKGROUND

[para 1] The Complainant was a recipient of benefits through the Workers' Compensation Board (the "Public Body"). After obtaining her personal information through an access request, she complained to this Office, by letter dated June 27, 2005, that the Public Body had improperly collected, used and disclosed her personal information, contrary to Part 2 of the *Freedom of Information and Protection of Privacy Act* (the "Act"). She also complained that the Public Body had failed to make every reasonable effort to ensure that her personal information was accurate and complete, contrary to the Act.

[para 2] Mediation was authorized but was unsuccessful. The matter was therefore set down for a written inquiry. As the same complainant is involved, this inquiry is a companion to the one in respect of Case File Number 3343 and resulting in Order F2006-019. While the two inquiries involve certain overlapping issues, they involve different public bodies.

II. RECORDS AT ISSUE

[para 3] As this inquiry involves the collection, use, disclosure, accuracy and completeness of personal information, there are no records directly at issue.

III. ISSUES

[para 4] The Notice of Inquiry, dated February 17, 2006, set out the following four issues:

A. Did the Public Body have the authority to collect the Complainant's personal information, as provided by sections 33 and 34 of the Act?

B. Did the Public Body have the authority to use the Complainant's personal information, as provided by section 39 of the Act?

C. Did the Public Body have the authority to disclose the Complainant's personal information, as provided by section 40 of the Act?

D. Did the Public Body make every reasonable effort to ensure that the Complainant's personal information was accurate and complete, as provided by section 35(a) of the Act?

IV. DISCUSSION OF ISSUES

A. Did the Public Body have the authority to collect the Complainant's personal information, as provided by sections 33 and 34 of the Act?

[para 5] From May 14 to 17, 2002, a private investigator engaged by the Public Body conducted video surveillance on the Complainant, as the Public Body believed that she may be misrepresenting her disability and therefore her entitlement to benefits. In addition to providing the Public Body with videotape footage, the private investigator also submitted a report of investigation, or video surveillance report, dated May 23, 2002. It is not disputed that the Public Body is responsible for the actions of its employees under the Act (Report 2001-IR-008 at para. 29). Here, under section 1(e) of the Act, this includes the private investigator, as he was performing a service under a contract or agency relationship with the Public Body.

[para 6] The Complainant submits that the video surveillance was an unauthorized collection of her personal information. She further submits that there was an unauthorized collection of her personal information by the Public Body when, in order to conduct the surveillance, it obtained her legal land description from the Municipal District of Rocky View in a fax dated May 2, 2002.

[para 7] The collection of personal information must be for an authorized purpose under section 33 of the Act, and the manner of collection must be in accordance with section 34.

1. Purpose of collection

[para 8] Section 33 of the Act reads as follows:

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

[para 9] Although a collection is authorized if it falls under any of the three paragraphs of section 33, the Public Body submits that the collection in this matter falls under all three paragraphs. Primarily, however, it argues that the collection of the Complainant's personal information through the video surveillance and fax was for the purposes of law enforcement under section 33(b) of the Act. It states that it commenced an investigation after it received a complaint from an external source alleging that the Complainant may be engaged in activities inconsistent with her disability.

[para 10] Under section 1(h)(ii) of the Act, "law enforcement" means, among other things, an "investigation … that could lead to a penalty or sanction." To meet this definition, both the public body's investigative authority and the penalty or sanction must be under the same statute (Order 99-010 at para. 21). The Public Body cites section 18(2) and 152 of the *Workers' Compensation Act*, as the sources of its investigative authority and the possible penalties or sanctions, respectively:

> *18(2) The [Workers' Compensation] Board or a person authorized in writing by the Board for the purpose may on its or the authorized person's own initiative or on complaint of a person interested, investigate any matter concerning the due administration of this Act.*
> …
>
> *152(1) A person who contravenes this Act or a regulation or order made under it is guilty of an offence.*
>
> *(2) Where a person is guilty of an offence referred to in subsection (1), the person is liable*
>
> *(a) to a fine of not more than $25 000 and, where the offence is a continuing offence, a further fine of not more than $10 000 for each day during which the offence continues, and*
>
> *(b) in the case of an individual, to imprisonment for a period not exceeding 6 months in addition to or instead of the fine.*

[para 11] One of the ways in which a person may contravene the *Workers' Compensation Act*, in connection with a claim for compensation, is by knowingly providing false or misleading information to the Public Body, or failing to inform it of a material change in the person's circumstances that may affect the person's entitlement to compensation or other benefits [section 151.1(1) of that Act]. The Public Body states that the investigation of the Complainant in the present matter was a "fraud" investigation. It further indicates that if a person is believed to have committed an offence, one of its investigators, who have special constable status, may lay an information (initiate a charge) on behalf of the Crown. The Public Body also states that it has a dedicated prosecutor responsible for commencing a prosecution where one is believed to be warranted.

[para 12] The parties' submissions do not indicate that the Complainant was ever charged with an offence or that a penalty under section 152 of the *Workers' Compensation Act* was ever imposed. However, there is no requirement that a penalty or sanction actually be imposed in order for there to be an "investigation" for the purposes of the definition of "law enforcement" under the *Freedom of Information and Protection of Privacy Act* (Order 96-021 at para. 210). An investigation must only have the *potential* to result in a penalty or sanction being imposed under the particular statute (Order 96-019 at para. 16).

[para 13] As the authority to investigate a matter concerning the due administration of the *Workers' Compensation Act* and the penalties or sanctions are in the same legislation, I am satisfied that an investigation by the Public Body under section 18(2) of that Act constitutes law enforcement. I note that a similar investigation by the Public Body was previously found to relate to law enforcement (Order 99-010 at para. 26).

[para 14] However, the Complainant submits that the *specific* investigation in her case was not authorized. This is because on April 16, 2002, prior to the surveillance, the Public Body suspended her wage replacement benefits (due to her failure to attend certain appointments). She states that she obtained a medical clearance to return to work following an examination by a physician on April 26, 2002, and that her shifts were to start on May 6, 2002. She submits that the Public Body had no authority to collect her personal information through the fax or surveillance in May 2002, as she was no longer receiving benefits through the Public Body, was not requesting any benefits, and was not appealing any decision of the Public Body. She argues that there was no basis for the investigation, as she could not have been misrepresenting the level of her disability if she was about to return to work.

[para 15] In response, the Public Body submits that, although her wage replacement benefits had been suspended, the Complainant continued to receive medical benefits through the Public Body in May 2002. It provided copies of payment screens showing that it had paid medical professional fees for services obtained by the Complainant that month. While not stated explicitly by the Public Body, the suggestion is that an individual may also be disentitled to medical benefits if he or she is misrepresenting a

disability, and that an investigation could nonetheless occur and a penalty could nonetheless be imposed.

[para 16] The Public Body reviewed the surveillance videotape and report on May 29, 2002 and, according to a file note, concluded that the information gathered would be used "to support a current plan to alter benefits." However, the investigation of the Complainant was not itself the reason for altering benefits. As indicated in a letter to the Complainant dated May 31, 2002, the basis for the Public Body's decision to discontinue benefits was her successful rehabilitation and return to full duties employment and full hours.

[para 17] Given the above sequence of events, I believe that the question of the Complainant's entitlement to benefits remained open when the video surveillance was conducted from May 14 to 17, 2002. Her wage replacement benefits had only been suspended as opposed to terminated the previous month, she continued to receive limited benefits in May 2002, and the termination of her benefits was not confirmed until the letter of May 31, 2002. Moreover, it would not appear that an individual needs to be receiving benefits in order for an investigation to be carried out under section 18(2) of the *Workers' Compensation Act*, as an investigation may presumably relate to the past administration of the Act. A business procedure of the Public Body indicates that investigations may also be conducted to demonstrate past misrepresentation.

[para 18] The Complainant further argues that video surveillance is a very privacy-intrusive form of technology and that it should therefore be used only in the most limited cases (PIPEDA Case Summary #269). While I agree, a public body is entitled to considerable latitude in deciding that the collection of personal information is necessary in a given case, and its decision should not be interfered with unless patently unreasonable (Order 98-002 at para. 152).

[para 19] Here, the Public Body based its decision to conduct video surveillance on information that it received from a third party. The Public Body's suspicion and its views regarding the allegedly inconsistent information may be found in certain records. As the basis for the investigation is apparent, I do not find that the Public Body's decision to collect the Complainant's personal information by way of video surveillance was patently unreasonable.

[para 20] I am satisfied that the specific investigation in the present matter was authorized under the *Workers' Compensation Act* and that the collection of the Complainant's personal information through the fax, video surveillance and video surveillance report in the course of that investigation was authorized for the purposes of law enforcement under section 33(b) of the *Freedom of Information and Protection of Privacy Act*. I do not need to determine whether the collection was also authorized under paragraphs (a) or (c) of that section.

2. Manner of collection

[para 21] The relevant provisions of the Act that govern the manner of collection of the Complainant's personal information in the present inquiry are the following:

> *34(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…*
>
> *(ii) another Act or a regulation under another Act…*
>
> *(g) the information is collected for the purpose of law enforcement…*
>
> *(k) the information is necessary…*
>
> *(ii) to verify the eligibility of an individual who is participating in a program of or receiving a benefit, product or service from the Government of Alberta or a public body and is collected for that purpose…*
>
> *(2) A public body that collects personal information that is required by subsection (1) to be collected directly from the individual the information is about must inform the individual of*
>
> *(a) the purpose for which the information is collected,*
>
> *(b) the specific legal authority for the collection, and*
>
> *(c) the title, business address and business telephone number of an officer or employee of the public body who can answer the individual's questions about the collection.*
>
> *(3) Subsections (1) and (2) do not apply if, in the opinion of the head of the public body concerned, it could reasonably be expected that the information collected would be inaccurate.*

[para 22] The Public Body submits that the video surveillance was a direct collection of the Complainant's personal information under section 34(1) of the Act. I agree. It has previously been concluded that an individual's image captured on video is personal information, and that videotaping is a collection of information directly from the individual the information is about (Report F2003-IR-005 at paras. 11 and 17). I also note a B.C. Order in which it was determined that information is collected directly from an individual when the disclosure to the public body occurs as a result of the individual's own activities (B.C. Order F07-18 at para. 104). I therefore find that the information on the surveillance videotape and in the video surveillance report was collected directly from the Complainant.

[para 23] The Complainant states that she did not consent to the collection of her personal information by way of video surveillance and did not know that it had been done until November 2002. In Order F2006-019 (at para. 32), I conclude that whenever a public body chooses to collect information directly from an individual, it is required to fulfill the notice requirements set out in section 34(2) of the Act, even if the collection could have been done indirectly under section 34(1). Section 34(2) requires the public body to inform the individual of the purpose for the collection, the legal authority for it, and contact information of an officer or employee of the public body who can answer questions. There is an exception to this where section 34(3) applies because it could reasonably be expected that, if the individual were informed about the collection, the information collected would be inaccurate.

[para 24] Here, the Public Body collected the information on the surveillance videotape and in the video surveillance report directly from the Complainant. It submits that the exception to informing the Complainant about the collection applies because if individuals were informed that they were the subject of an investigation and were going to be videotaped, they would alter their actions thereby rendering the collected information inaccurate. I agree that this could reasonably be expected and therefore do not find that the Public Body had to fulfill the notice requirements set out in section 34(2) of the Act.

[para 25] As the video surveillance was conducted in a manner that fell under the exception set out in section 34(3) of the Act, the manner of collection of the Complainant's personal information on the videotape and in the accompanying report was in accordance with the Act, even though it was a direct collection and the Complainant was not informed about it.

[para 26] Unlike the video surveillance, the collection of the Complainant's legal land description in the fax from the Municipal District of Rocky View was an *indirect* collection of her personal information. It therefore had to be authorized by one of the paragraphs of section 34(1) of the Act. The Public Body cites alternate provisions as authority, namely paragraphs 34(1)(a)(ii) (collection authorized by another Act), 34(1)(g) (collection for the purposes of law enforcement) and 34(1)(k)(ii) (collection of information necessary to verify eligibility for a program or benefit).

[para 27] Earlier in this Order, I concluded that the investigation of the Complainant by the Public Body was for the purposes of law enforcement. As the collection of the legal land description was in the context of that investigation, it was also for the purposes of law enforcement. Accordingly, the collection of the legal land description in a fax from the Municipal District of Rocky View was in accordance with paragraph 34(1)(g) of the Act, and it is not necessary to determine whether it was authorized under another paragraph.

3. Additional concerns about collection

[para 28] The Complainant has raised further concerns regarding her privacy on the basis that the video surveillance was conducted while the private investigator engaged by the Public Body was on her private property. I do not have the jurisdiction to address this issue, as the Act does not contain provisions governing the location from which video surveillance may be conducted.

[para 29] The Complainant attaches a letter from a neighbour indicating that he also has privacy concerns about the video surveillance, both because it invaded the privacy of residents in the area generally and because his image appears in the video. As the neighbour has not made a complaint to this Office in his own right, and the Public Body has not had an opportunity to respond to the letter, as it was submitted *in camera*, I do not intend to address this specific issue.

B. Did the Public Body have the authority to use the Complainant's personal information, as provided by section 39 of the Act?

[para 30] The Complainant submits that the Public Body used the personal information collected by video surveillance in May 2002 contrary to the Act. Because the Public Body also used information about the Complainant's legal land description to conduct the surveillance, I will also address the use of that information.

[para 31] The Public Body relies on the following provision to justify its use of the Complainant's personal information:

> *39(1) 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 32] The Public Body submits that the legal land description was used to conduct the video surveillance in the context of law enforcement, which was the purpose for which the information was collected. I agree and therefore find that the legal land description was put to an authorized use.

[para 33] I previously concluded that the personal information on the videotape was collected for the authorized purposes of law enforcement in the context of an investigation under section 18(2) of the *Workers' Compensation Act*. The Public Body indicates that the information was then used to determine whether the Complainant was misrepresenting her disability and was or was not entitled to the benefits granted to her. Because ascertaining the possibility of misrepresentation was the purpose of the investigation (and determining entitlement to benefits is the necessary result), the personal information on the videotape was initially used for the purpose for which it was collected. I therefore find that the requirement of section 39(1)(a) was met and that the information on the videotape was initially put to an authorized use.

[para 34] However, the Complainant is also concerned that the videotape and accompanying video surveillance report remain on her file. She submits that the Public Body continues to use the personal information on the videotape and in the report contrary to the Act. She argues that her personal information is being improperly used because the video surveillance report was deemed irrelevant in a subsequent proceeding (as the proceeding related to a matter that predated the surveillance), the content of the videotape was found by a physician in February 2003 not to be inconsistent with her disability, and the Public Body later determined that she was entitled to benefits.

[para 35] The Public Body responds that these facts do not detract from the relevance that the video surveillance was considered to have by the Public Body at the time that it was conducted. It argues that the videotape and report should remain on file as part of the adjudication of the Complainant's claim for benefits, and as a record of the information and processes leading up to the decisions that have been made. Moreover, because a physician provided a written review of the videotape, the Public Body submits that the videotape should remain on file for context.

[para 36] As a preliminary point, I am not certain that simply retaining the videotape and report on file amounts to using them. However, whether or not that is a use, I believe that the videotape and report may be retained by the Public Body. If they were previously used to make a decision that directly affected the Complainant, the Public Body had the obligation to retain them for at least one year after using them, in accordance with section 35(b) of the Act. Given that the one year period is the minimum, the Public Body may retain them for longer.

[para 37] Even if the videotape and report were never used to make a decision affecting the Complainant, I still conclude that they may be retained by the Public Body as part of the record of information that was once considered relevant to the Complainant's claim. I do not have the jurisdiction to order the removal or destruction of the videotape or report on the basis that their contents were later found not to be detrimental to the Complainant's claim for benefits. I have already concluded that the personal information on the videotape and in the report was collected for an authorized purpose, and the Act does not contain requirements for the destruction of information that was collected in accordance with the Act.

[para 38] There is also no evidence before me suggesting that the videotape or report should be destroyed in compliance with rules referred to in section 53(1)(a) of the Act. That section allows the Commissioner to ensure compliance with rules relating to the destruction of records set out in another enactment, bylaw, resolution or other legal instrument.

[para 39] Although I conclude that the surveillance videotape and video surveillance report may be retained by the Public Body, I note that its own business procedure states that the videotape should be stored by the claims records unit and accessed according to another business procedure. In other words, the Public Body's policy appears to dictate that at least the videotape should not remain on the Complainant's file itself.

[para 40] The Complainant submits that there was an unauthorized use of the video surveillance report by the Public Body when it was sent to a physician in January 2005. I intend to address this below as a disclosure. However, I note that, whether the report was used, disclosed or both, one of the tests as to whether that conduct was authorized is the same in this case. Both a use and disclosure of the Complainant's personal information would be authorized if it was for the purpose for which the information was collected or compiled or for a use consistent with that purpose [sections 39(1)(a) (use) and 40(1)(c) (disclosure) of the Act].

C. Did the Public Body have the authority to disclose the Complainant's personal information, as provided by section 40 of the Act?

[para 41] The Complainant submits that the Public Body disclosed her personal information contrary to the Act when it sought her legal land description from the Municipal District of Rocky View, sent the video surveillance report to a third party, disclosed information to the Calgary Police Service, and disclosed unnecessary and irrelevant personal information to others.

[para 42] The provisions of the Act, on which the Public Body relies to justify its disclosure of the Complainant's personal information, are the following:

> *40(1) A public body may disclose personal information only…*
>
> *(b) if the disclosure would not be an unreasonable invasion of a third party's personal privacy under section 17,*
>
> *(c) for the purpose for which the information was collected or compiled or for a use consistent with that purpose…*
>
> *(e) 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,*
>
> *(f) for any purpose in accordance with an enactment of Alberta or Canada that authorizes or requires the disclosure…*
>
> *(l) for the purpose of determining or verifying an individual's suitability or eligibility for a program or benefit...*
>
> *(q) to a public body or a law enforcement agency in Canada to assist in an investigation*
>
> *(i) undertaken with a view to a law enforcement proceeding, or*
>
> *(ii) from which a law enforcement proceeding is likely to result,*

> *(r) if the public body is a law enforcement agency and the information is disclosed*
>
> *(i) to another law enforcement agency in Canada…*

[para 43] In conjunction with section 40(1)(b), which permits disclosure in accordance with section 17 of the Act, the Public Body cites section 17(2)(c):

> *17(2) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if…*
>
> *(c) an Act of Alberta or Canada authorizes or requires the disclosure…*

[para 44] As the Complainant submits that there were several instances of unauthorized disclosure of her personal information by the Public Body, I will group and address them under separate headings.

1. Disclosure to the Municipal District of Rocky View

[para 45] The Complainant submits that there was unauthorized disclosure of her personal information to the Municipal District of Rocky View when the Public Body asked it for her legal land description. The disclosure was by way of a telephone conversation followed by an undated letter in April 2002. The Complainant's primary concern is that the Public Body accused her of misrepresenting her disability, and conveyed that to the Municipal District.

[para 46] The Public Body's letter was addressed specifically to the Acting Chief Constable, Protective Services - Highway Patrol, Municipal District of Rocky View. It provided the Complainant's name and mailing address, and requested assistance in determining her legal land description. It also provided the reason for the request, which was that the Public Body was conducting an investigation of the Complainant in relation to allegations that she was misrepresenting her current level of disability. I have no evidence of what personal information was disclosed during the telephone conversation, except what is referred to in the follow-up letter. I therefore cannot determine whether there was any other authorized or unauthorized disclosure during the telephone conversation.

[para 47] The Public Body argues that disclosure of the Complainant's personal information to the Municipal District was authorized under sections 40(1)(q) and 40(1)(r)(i) of the Act. Section 40(1)(q) permits disclosure to a public body or law enforcement agency in Canada to assist in an investigation undertaken with a view to a law enforcement proceeding, or from which a law enforcement proceeding is likely to result. Section 40(1)(r)(i) permits disclosure between two law enforcement agencies in Canada.

[para 48] If a body is, as part of its functions, involved in law enforcement, it is a law enforcement agency (Order 96-007 at p. 8 or para. 54). As I have already concluded that the Public Body was carrying out functions for the purposes of law enforcement when it was investigating the Complainant, it may be considered a law enforcement agency. The Municipal District of Rocky View may also be considered a law enforcement agency, as the division responsible for protective services and highway patrol is engaged in law enforcement.

[para 49] The Complainant argues that disclosure did not fall under section 40(1)(r)(i) of the Act, as Protective Services - Highway Patrol of the Municipal District of Rocky View is essentially a by-law office and not normally involved in a fraud investigation under the *Workers' Compensation Act*. On the strict wording of section 40(1)(r)(i) of the Act, however, there is no required purpose of disclosure or the need for an operational connection between the two law enforcement agencies. In fact, the lack of a limitation in the provision suggests that *any* personal information may be disclosed between two law enforcement agencies, although this is contrary to the likely intention.

[para 50] To interpret paragraph 40(1)(r)(i) neither too broadly nor too narrowly, I believe that it may be informed by paragraph 40(1)(q) of the Act, which allows disclosure to a law enforcement agency, as well as public bodies not engaged in law enforcement at all, if it is to assist in an investigation and relates to a law enforcement proceeding. In my view, disclosure between two law enforcement agencies under section 40(1)(r)(i) does not, on the one hand, require the two agencies to be routinely involved in the same type of law enforcement, but it does, on the other hand, imply that disclosure should be for some legitimate purpose, which would at least include law enforcement generally.

[para 51] As both the Public Body and Municipal District of Rocky View are law enforcement agencies, and disclosure was in the context of law enforcement generally, I conclude that disclosure of the Complainant's personal information from the Public Body to the Municipal District of Rocky View was authorized under section 40(1)(r)(i) of the Act. It is not necessary for me to specifically determine whether disclosure was also authorized under section 40(1)(q).

[para 52] I also find that, in disclosing the Complainant's name and address, as well as the reason for the request for assistance, the Public Body disclosed personal information only to the extent necessary to enable it to carry out the authorized purpose in a reasonable manner, as required by section 40(4). The reason for the request, and brief summary of the nature of the investigation, indicated to the Municipal District that the purpose of disclosure was for law enforcement, and the Complainant's name and mailing address provided it with the information necessary to ascertain her legal land description.

2. Disclosure of the video surveillance report

[para 53] The Complainant submits that the Public Body disclosed the video surveillance report of May 23, 2002 contrary to the Act when it sent a copy to a physician at the Columbia Rehabilitation Centre in January 2005.

[para 54] The Public Body responds that the report was sent to the physician when requesting an examination of the Complainant's medical status. Such an examination is authorized under section 39(1) of the *Workers' Compensation Act*. When requesting a medical status examination, the Public Body's business procedure states that the physician should be sent background information about the individual, including "investigative/specialist and recent medical reports." The Public Body submits that the disclosure of the video surveillance report was authorized under sections 40(1)(c) (purpose the same as or consistent with collection) and 40(1)(l) (verifying eligibility for a program or benefit) of the Act.

[para 55] Earlier, I determined that the collection of the Complainant's personal information on the videotape and in the accompanying report was for the purposes of law enforcement. Under section 40(1)(c) of the Act, the Public Body may subsequently disclose that information if the disclosure is for the purpose for which the information was collected or compiled or for a use consistent with that purpose.

[para 56] The Public Body originally collected the information in the video surveillance report in May 2002 in order to ascertain whether the Complainant was misrepresenting her disability. This was the specific law enforcement purpose. The Public Body then disclosed the information to the physician in January 2005 in order to ascertain her current medical status. In my view, those two purposes were not the same.

[para 57] It is my understanding that by 2005, the Public Body was no longer investigating the Complainant for a possible contravention of the *Workers' Compensation Act* or other wrongdoing. The Public Body does not purport to have disclosed the video surveillance report in January 2005 on the basis of a fraud or surveillance investigation of the Complainant. This is in contrast to February 2003, when it disclosed the surveillance videotape to a different physician to obtain his views on whether the Complainant's activities were consistent with her disability.

[para 58] In January 2005, the Public Body was instead determining or verifying the Complainant's existing medical condition, as it would do in relation to many other clients. The Public Body states that the purpose of the medical evaluation of the Complainant in January 2005 was to identify fitness for work, the magnitude of any impairment, current work restrictions and duration, and the need for further medical investigation. This is not the same law enforcement purpose for which the information in the video surveillance report was originally collected. The Public Body states itself that the medical evaluation was requested pursuant to section 39(1) of the *Workers' Compensation Act*, not in the context of an investigation under section 18(2) of that Act.

[para 59] However, the video surveillance report may also be disclosed under section 40(1)(c) of the Act if it was disclosed for a use consistent with the purpose for which the information was collected. Section 41 of the Act provides:

> *41 For the purposes of sections 39(1)(a) and 40(1)(c), 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 60] The Public Body states that it included the video surveillance report in the package sent to the physician in 2005 in order to provide him with a view of the Complainant's capabilities outside a clinical setting, allowing for a truer indication of her overall abilities. I do not find that this had a reasonable and direct connection to the purpose of the original collection of information in the report, nor do I find that disclosure was necessary for performing the Public Body's statutory duties or operating its legally authorized program.

[para 61] As the Complainant was no longer under investigation in January 2005, I do not believe that disclosing the video surveillance report at that time was reasonably or directly connected to the original law enforcement matter. In fact, I find that the disclosure was unreasonable. If an individual is no longer under suspicion of misrepresenting his or her disability, he or she should be able to expect that personal information pointing to that suspicion will no longer be disclosed. By sending the report to the physician in January 2005, the Public Body allowed him to know that the Complainant was once suspected of misrepresenting her disability. This personal information is irrelevant to ascertaining an individual's current medical status and may, in fact, inappropriately influence a physician's evaluation.

[para 62] Not only do I find that disclosure of the information in the video surveillance report did not have a reasonable and direct connection to the original collection under paragraph 41(a) of the Act, I also find that it was not necessary under paragraph 41(b). The Public Body's statutory duty, or aspect of its legally authorized program, in relation to the Complainant in January 2005 was to ascertain her current medical status. The fact that other clients of the program undergo medical status examinations without a video surveillance report being sent to the examining physician, and physicians already receive recent medical reports and other information for background, demonstrates to me that disclosing surveillance information is not necessary to ascertain current medical status.

[para 63] The Public Body alternatively argues that disclosure of the information in the video surveillance report in January 2005 was authorized under section 40(1)(l) of the

Act, on the basis that it was for the purpose of determining or verifying an individual's suitability or eligibility for a program or benefit. While that may have been the Public Body's objective when it requested a medical status examination of the Complainant, a disclosure of personal information must also be in accordance with section 40(4) of the Act, which reads as follows:

> *40(4) A public body may disclose personal information only to the extent necessary to enable the public body to carry out the purposes described in subsections (1), (2) and (3) in a reasonable manner.*

[para 64] As already discussed, I do not believe that disclosure of the information in the video surveillance report was necessary to ascertain the Complainant's medical status in 2005. I have also already found that disclosure of the report was not reasonable, as prior suspicions about an individual should no longer be disclosed once he or she is no longer under investigation for possible wrongdoing. I therefore find that, even if the purpose of disclosure to the physician in January 2005 was to determine or verify the Complainant's suitability or eligibility for benefits from the Public Body, disclosure of the personal information in the video surveillance report was not necessary to carry out that purpose in a reasonable manner.

[para 65] Sections 39(1)(a) and 40(1)(c) of the Act allow a use and disclosure, respectively, for the purpose for which the information was collected or for a consistent purpose. Section 41 applies to both of those sections when determining a consistent purpose. Sections 39(4) and 40(4) mirror one another in that they allow a use or disclosure, respectively, only to the extent necessary to carry out an authorized purpose in a reasonable manner. This means that, whether the Public Body's conduct in relation to the video surveillance report when it sought a medical status examination in January 2005 was a use or disclosure of the Complainant's personal information, I find that it was not authorized under any of the aforementioned sections.

[para 66] Although I have made the foregoing conclusions, I recognize that a law enforcement investigation and medical status examination have a common *result* in that they both lead the Public Body to determine whether the Complainant is or is not entitled to benefits. I also recognize that, in addition to a law enforcement purpose under section 33(b) of the Act, the Public Body briefly raised other purposes for the initial collection of the information on the surveillance videotape, namely those set out in sections 33(a) (collection expressly authorized by an enactment) and 33(c) (information relating directly to and necessary for a public body's operating program or activity).

[para 67] However, when deciding whether the purpose of a use or disclosure of personal information is the same as or consistent with the purpose of collection, I believe that one should examine the specific, primary or dominant purpose. Otherwise, a public body would have too wide of a latitude to use and disclose personal information simply by characterizing the purposes broadly enough (e.g., by saying that all information is collected, used and disclosed because it relates directly to and is necessary for an operating program or activity).

[para 68] I conclude in the present inquiry that the Public Body's original purpose for collecting the Complainant's personal information by way of video surveillance in May 2002 was to investigate a possible wrongdoing, regardless of whether that purpose is characterized as one under section 33(a), (b) or (c) of the Act. Conversely, I conclude that the purpose of the use or disclosure of the information in January 2005 was for the purpose of ascertaining current medical status, which is not the same as or consistent with the original purpose of collection. Moreover, regardless of the characterization of the purposes of collection, use or disclosure in this inquiry, I conclude that the Public Body's use or disclosure of the video surveillance report in relation to the physician in January 2005 was not necessary to carry out an authorized purpose in a reasonable manner.

3. Disclosure of other personal information

[para 69] The Public Body requested the physician's examination of the Complainant's medical status by letter dated January 24, 2005. The Complainant submits that the letter included irrelevant and unnecessary personal information regarding her financial situation, family status and an appeal matter. She also submits that irrelevant and unnecessary personal information was disclosed in attachments to the letter, which were originally in a package provided to the Public Body by the employer. The attachments consisted of a letter of December 19, 2001, a note of June 24, 2003 and an e-mail of January 14, 2004.

[para 70] The Public Body concedes that information regarding the Complainant's financial situation and an appeal matter should not have been disclosed to the physician in the January 24, 2005 letter. I agree. I also find that the Complainant's family status should not have been disclosed. The information about finances, an appeal and family status was not necessary for the Public Body to obtain a medical examination of the Complainant by the physician. The Public Body has not indicated or established that disclosure was for an authorized purpose under section 40(1) of the Act.

[para 71] The Public Body submits that the letter of December 19, 2001, which recounted a telephone conversation between the Public Body and the Complainant, was disclosed to the physician under the authority of section 147(2) of the *Workers' Compensation Act*. The suggestion is that disclosure was therefore authorized under section 40(1)(f) of the *Freedom of Information and Protection of Privacy Act* (purpose in accordance with an enactment authorizing disclosure). Section 147(2) of the *Workers' Compensation Act* reads as follows:

> *147(2) No member or officer or employee of the [Public Body] shall divulge information respecting a worker … that is obtained by that person in that person's capacity as a member, officer or employee unless it is divulged under the authority of the [Public Body] to the persons directly concerned…*

[para 72] The Public Body submits that the physician was a person "directly concerned" by the information in the December 19, 2001 letter and that the Public Body was therefore authorized to disclose it to him. In the absence of further evidence from

the Public Body regarding the scope and interpretation of section 147(2), I fail to see how the physician was directly concerned by the information in the letter. The information pertained to an incident that did not involve the physician, and I do not believe that the circumstances suggested that he might be affected.

[para 73] Moreover, there is a previous order in which it was concluded that section 147(2) of the *Workers' Compensation Act* does not give the Public Body the broad capacity to disclose information simply because someone made the decision to do so and it was therefore "under the authority" of the Public Body, as this would make the specific information-sharing provisions of that Act redundant and meaningless (Order F2006-026 at paras. 30 and 31). In other words, section 147(2) should be read as a limitation and interpreted to permit disclosure only to the extent authorized by a specific provision of the *Workers' Compensation Act*. Here, the Public Body offers no other basis on which the Complainant's personal information in the December 19, 2001 letter could be disclosed to the physician.

[para 74] While a complainant has the initial burden to establish that personal information was disclosed as he or she alleges, if some disclosure of personal information is proven, the burden shifts to the Public Body to justify the disclosure under the Act (Order F2003-017 at para. 21). I find that the Complainant has established that her personal information was disclosed in the December 19, 2001 letter but that the Public Body has not established that disclosure was justified under the Act. I therefore find that the disclosure was not authorized.

[para 75] The note of June 24, 2003 contained, among other things, information about the Complainant's vacation requests, work schedule and preferred shifts, as conveyed in a telephone conversation with her supervisor. The e-mail of January 14, 2004 also contained information regarding the days and hours of the week that the Complainant preferred to work, as well as her interest in certain full-time positions if created. The Public Body submits that the note and e-mail were disclosed to the physician so that he could evaluate whether the Complainant could work more hours, or could not work certain days or times due to her medical condition. The Public Body argues that disclosure was authorized under sections 40(1)(c) (purpose the same as or consistent with collection) and 40(1)(l) (verifying eligibility for a program or benefit) of the Act.

[para 76] Whether or not the information in the note and e-mail was disclosed for an authorized purpose under sections 40(1)(c) or 40(1)(l) of the Act, I do not believe that the Public Body disclosed personal information only to the extent necessary to enable it to carry out the authorized purpose in a reasonable manner, as required by section 40(4). If the Public Body wished to know whether the Complainant's medical condition dictated how long or when she could work, it could have simply asked the physician that question. If the Public Body wished to clarify whether working a specific day or shift was possible for the Complainant, it could have simply provided the physician with the specific day or shift.

[para 77] I note that, in the January 24, 2005 letter to the physician, the Public Body had already paraphrased the content of the January 14, 2004 e-mail setting out the Complainant's work interests and shift preferences. I believe that this was sufficient background information to enable the physician to provide the evaluation needed by the Public Body. It was not necessary to attach a copy of the Complainant's e-mail. I also believe that it was not necessary to provide a copy of the June 24, 2003 note describing the telephone call between the Complainant and her supervisor. The note contained certain information conveyed by the Complainant that was not related to evaluating her medical condition or capacity to work.

[para 78] I accordingly find that disclosure of the information in the note of June 24, 2003 and e-mail of January 14, 2004 was not authorized under the Act, with the exception of the information from the e-mail that was paraphrased in the letter of January 24, 2005.

[para 79] The Complainant submits that information relating to a human rights complaint was also disclosed by the Public Body to the physician contrary to the Act. As I was unable to locate a related document or other evidence of the disclosure in the parties' submissions, I am unable to address this concern. The Complainant has not discharged the burden of establishing that her personal information was disclosed in this instance.

4. Disclosure to the Calgary Police Service

[para 80] In administering the Complainant's file, the Public Body sent her personal information to the Calgary Police Service (the "CPS"), which was her place of employment at the time of the injury that gave rise to her disability. However, the Complainant states that her employer is actually the City of Calgary. She therefore argues that there was ongoing unauthorized disclosure of her personal information to the CPS. She indicates that, while she understands that the CPS required information to accommodate her needs in the workplace, there was no authority for it to receive other medical or personal information.

[para 81] The Public Body submits that it recognized the CPS as the Complainant's employer, and therefore sent her personal information to that body, for the following reasons: the City of Calgary listed an individual within the CPS as the "return to work" contact; this individual has been the contact since 1997 and the Public Body was never advised by the City of Calgary to send information elsewhere; the initial report submitted by the Complainant at the time of her injury listed her employer as the "Calgary Police Service"; and employer reports submitted to the Public Body listed the employer as "City of Calgary, Police Service".

[para 82] I do not have sufficient evidence before me to ascertain which body is the Complainant's employer for the purpose of the *Workers' Compensation Act*. I do not believe that indications on certain forms or elsewhere are determinative. In the absence of conclusive evidence to the contrary, I will assume that the CPS was entitled to know

the Complainant's personal information, but only to the extent authorized under the *Freedom of Information and Protection of Privacy Act* (which in turn allows disclosure in accordance with the *Workers' Compensation Act*). The Complainant appears to acknowledge that the CPS was authorized to know certain personal information, as she acknowledges that limited information could be sent to the CPS Safety and Claims Unit.

[para 83] The Complainant submits that the CPS was only entitled to know her personal information to the extent necessary to accommodate her in the workplace and that certain medical information should not have been disclosed. To reduce the risk of unauthorized disclosure, the Complainant wrote to the Public Body in January 2005 to advise that, in administering her file, it should send her personal information to the appropriate contact person at the City of Calgary rather than the CPS.

[para 84] The Public Body responds that the *Workers' Compensation Act* gives it the authority to disclose a variety of personal information to an employer. This includes when the employer is advised of a worker's entitlement to benefits and the reasons (including medical reasons), the employer has requested a report of the progress being made by a worker, or there is a review or appeal under way (in which case the employer has a right of access to all relevant files).

[para 85] Although the Complainant submits that there was ongoing unauthorized disclosure by the Public Body to the CPS, and the Public Body cites authority to disclose personal information to an employer generally, I can only address specific instances of disclosure. One was in connection with a physician's letter dated June 25, 2001, which set out the dates of the Complainant's past medical appointments and summarized the findings or medical follow-up relating to those appointments. A copy of the letter was provided by the Public Body to the CPS.

[para 86] The Public Body states that the information in the June 25, 2001 letter was collected for the purpose of confirming the initial date of the Complainant's injury. It states that it disclosed the letter to the CPS also to confirm the date of injury, which it submits was authorized under sections 40(1)(c) (purpose the same as or consistent with collection) and 40(1)(l) (verifying eligibility for a program or benefit) of the Act.

[para 87] I find that disclosure of the June 25, 2001 letter to the CPS was not authorized, as more personal information was disclosed than necessary to carry out an authorized purpose, contrary to section 40(4) of the Act. If the Public Body wished to confirm the date of the initial workplace injury, it could have asked what the CPS believed was the date of injury and then compared that response to the information in the physician's letter, without disclosing the letter. If there was inconsistency in the dates or if clarification was required, the Public Body could have asked the CPS whether it believed the workplace injury occurred before, near or after a particular date, without even necessarily disclosing the fact that the date coincided with a medical appointment. To meet the purpose of confirming the date of injury, the Public Body did not need to disclose the dates of all of the Complainant's medical appointments and did not need to disclose the nature or results of any of them.

[para 88] The Complainant submits that another instance of unauthorized disclosure occurred when the Public Body circulated her medical status examination report (also called a return to work assessment), dated January 28, 2005, in advance of a meeting on February 10, 2005. The Complainant states that she was told that it was mandatory for her to attend the meeting in order to discuss her medical examination. Because the meeting was attended by certain representatives of CPS who she believes were not entitled to know her personal information, the Complainant submits that there was also unauthorized oral disclosure.

[para 89] The Public Body states that the purpose of the meeting was to discuss a plan for the Complainant to gradually return to work. The Public Body indicates that, for such a meeting, several representatives of an employer might attend in order to ensure that the plan is accomplished, and that the worker's medical information would necessarily be shared in order to find suitable modified work.

[para 90] As I have no evidence of what was discussed at the February 10, 2005 meeting, I am unable to determine whether there was unauthorized oral disclosure. I do, however, have a copy of the medical status examination report of January 28, 2005 in order to determine whether there was unauthorized disclosure when it was distributed to individuals attending the February 10, 2005 meeting. Whether it was distributed before or during the meeting, I accept that it was in fact distributed, as the Public Body does not deny this.

[para 91] The medical status examination report contains a large amount of the Complainant's personal information. In addition to information pertaining to her workplace injury, treatment, employment history and current ability to perform work-related functions, the report also contains information about other medical conditions, family and non-work-related activities, and the nature of the medical status examination, including the Complainant's demeanor at the time.

[para 92] The Public Body indicates that the purpose of the meeting was to discuss a plan for the Complainant to gradually return to work. While not expressly stated, the suggestion is that disclosure was authorized under section 40(1)(c) of the Act (purpose the same as or consistent with collection). I find that some of the information in the medical examination report was disclosed for the purpose of developing a return to work plan, which was the same purpose for which the Public Body collected the information from the physician. However, I find that disclosure of other information in the report was not authorized under section 40(4) (disclosure only to the extent necessary).

[para 93] While disclosure of some of the information in the report may have been necessary to enable the Public Body to develop a return to work plan in conjunction with the CPS, this is not true for much of the information in the report. In order to carry out an authorized purpose in a reasonable manner, it was not necessary for the Public Body to disclose very personal information about the Complainant's medical history, the nature of the treatment for her workplace injury, her family and non-work-related activities, and what transpired during the physical examination itself. I do not believe that it is

reasonable or necessary for the CPS to know this information in order to develop a return to work plan.

[para 94] Although the Public Body cannot control what a physician puts in a medical examination report or return to work assessment, the Public Body nonetheless has a responsibility to ensure that it does not disclose personal information contrary to the Act. Among possibly other alternatives, the Public Body should have obtained the Complainant's consent to distribute the full report, severed irrelevant and unnecessary personal information from the report before distributing it, or disclosed, in another document or orally, only that information in the medical report that was necessary in order to develop the return to work plan.

[para 95] Regardless of the section of the Act under which the Public Body submits that it had authority to disclose the letter of June 25, 2001 and the medical status examination report of January 28, 2005, I find that disclosure of certain information in the letter and report to the CPS was not necessary to enable the Public Body to carry out an authorized purpose in a reasonable manner, as required by section 40(4). As I have addressed the specific instances of disclosure to the CPS raised by the Complainant, and set out the Public Body's submissions regarding the purpose of disclosure in those instances, it is not necessary for me to review any of the other purposes of disclosure set out in section 40(1) or 17(2) of the Act.

D. Did the Public Body make every reasonable effort to ensure that the Complainant's personal information was accurate and complete, as provided by section 35(a) of the Act?

[para 96] The Complainant submits that, in several instances, the Public Body failed to ensure that her personal information was accurate and complete. Section 35(a) of the Act reads as follows:

> *35 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…*

[para 97] The Complainant argues that there were inaccuracies in the personal information about her that was conveyed by the Public Body to the Municipal District of Rocky View during a telephone conversation in April 2002. She also submits that there were inaccuracies in her personal information contained in the following records (with the submitted inaccuracies in parentheses):

- Letter of June 25, 2001 (information regarding a prior physical condition)
- Letter of December 19, 2001 (information regarding a telephone conversation)
- E-mail of April 16, 2002 (claims about extent of injury)

- E-mail of July 3, 2003 (information regarding number of hours worked per week, number of children, a garden, boarding horses, contents of résumé and extent of injury)
- Letter of January 24, 2005 (information regarding benefit amounts and a garden)
- Memo of November 28, 2005 (information regarding a prior physical condition)

[para 98] Although the future tense is used, section 35(a) also applies to past decisions of a public body (Order 98-002 at para. 77). In order for a public body to be required to make every reasonable effort to ensure that information is accurate and complete, section 35 requires there to be personal information about an individual, and the public body must have used or intend to use it to make a decision that directly affects the individual (Order 98-002 at para. 74).

[para 99] Section 1(n) of the Act defines "personal information" as *recorded* information about an identifiable individual. As section 35(a) requires the existence of personal information, a public body has no obligation to ensure that non-recorded information is accurate and complete. I am therefore unable to address any alleged inaccuracies in the information conveyed during the telephone conversation between the Public Body and the Municipal District of Rocky View in April 2002.

[para 100] I find that the alleged inaccuracies in the six records listed above involve the Complainant's personal information, the nature of which is paraphrased in the parentheses. I also believe that most of the information (regarding a prior physical condition, a telephone conversation, claims about extent of injury, number of hours worked per week, a garden, boarding horses, and contents of résumé) was likely used to make decisions directly affecting the Complainant. These decisions included a decision whether to conduct video surveillance, a decision whether to continue to grant benefits and a decision regarding current medical status. However, I do not believe that the information regarding number of children and benefit amounts was likely used to make any of these decisions. I will therefore not address those two items of information further.

[para 101] In order for me to conclude that the Public Body failed to make reasonable efforts to ensure the accuracy of personal information used to make a decision, I must be able to determine whether the information contained errors and therefore was inaccurate. I do not have sufficient evidence to evaluate the accuracy of the information regarding the prior physical condition, the telephone conversation, claims about the extent of injury, and boarding horses. For example, I do not have definitive information, or proof of what was or was not said in the past. I therefore conclude that the Public Body met its duty under section 35(a) with respect to the items of personal information just mentioned.

[para 102] I note that, in an effort to ensure that personal information was complete, the Public Body placed a letter from the Complainant on her file setting out her version of the telephone conversation described in the December 19, 2001 letter. As just stated above, however, I do not have sufficient evidence to determine which version is correct.

[para 103] I further note that the information regarding the prior physical condition in the letter of June 25, 2001 was the Public Body's recording of a statement by a third party. In the context of section 36 of the Act, governing the correction of personal information by a public body, it was stated that third party statements do not appear for their truth but rather for the fact that they were said, truthful or not (Order 97-020 at para. 127). If information is a record of a statement by a third party about an individual, it cannot be concluded that the information is inaccurate unless there is evidence that the third party's statement was not accurately recorded (Order 97-020 at para. 128). I believe that these principles also apply in the context of section 35(a) of the Act, and I have no evidence here that the third party statement was inaccurately recorded.

[para 104] The second statement regarding the prior physical condition is in a memo of November 28, 2005 from a physician. As the statement is contained in a document that was prepared and submitted to the Public Body by a third party, I do not believe that the Public Body has a duty under section 35(a) of the Act to make reasonable efforts to ensure that it is accurate. The statement forms part of a third party opinion and the integrity of a record not prepared by a public body should be maintained, as has been discussed in the context of section 36 of the Act (Order 97-020 at para. 132).

[para 105] The references to a garden in the e-mail of July 3, 2003 and letter of January 24, 2005 are about what is shown on the surveillance videotape. I consider the statements to concern a disputed fact, the accuracy of which depends on one's opinion or interpretation. In the context of section 36, a public body may exercise its discretion not to correct an individual's personal information where there is a dispute about whether there is actually an error of fact (Order 97-020 at para. 122). If a public body does not have the obligation to correct this type of information under section 36, it flows that the public body will not have failed to ensure that the information was accurate under section 35(a).

[para 106] The statement regarding number of hours worked in the e-mail of July 3, 2003 uses the phrase "once per week" (not "one per week," as indicated by the Complainant). As I do not have supporting evidence to verify the statement in its context, I am unable to conclude that it is inaccurate.

[para 107] I concluded above that certain personal information of the Complainant was likely used to make decisions that directly affected her. This included the statement about the contents of her résumé, which was made in a July 3, 2003 e-mail to a physician who makes decisions about the Complainant's medical status, and whose opinions are then used by the Public Body to determine the Complainant's entitlement to benefits.

[para 108] I have a copy of a résumé of the Complainant. Although there is no date attached to it and the Complainant does not expressly state that it is the outdated résumé in question, I assume that it is. I am therefore in a position to verify the accuracy of the statement made by the Public Body in the July 3, 2003 e-mail.

[para 109] Although I use the résumé as evidence, I recognize that the Public Body did not have access to it, nor was it advised that I was planning to refer to it. However, I do not believe that this precludes me, in the circumstances of this inquiry, from using it to evaluate the accuracy and completeness of the Complainant's personal information. As an administrative tribunal, this Office is not bound by strict rules of evidence, which is demonstrated by the fact that the Office may accept submissions and evidence *in camera*. Further, notifying the Public Body that I intended to refer to the résumé would serve no practical purpose, as the Complainant has indicated that she does not want the Public Body to obtain a copy of the résumé. In other words, the Public Body would remain unable to address the résumé as evidence anyway.

[para 110] Although the résumé indicates that the Complainant's hobbies and interests include some of those mentioned in the e-mail, not all of the hobbies and interests mentioned in the e-mail are found in the résumé. Some of the Complainant's personal information in the e-mail of July 3, 2003 was therefore inaccurate. I also find that the information was incomplete because the Public Body should have indicated the time period to which the résumé related (e.g., at what point before or after the Complainant's injury, or the date that it was submitted to the CPS).

[para 111] Section 35(a) requires a public body to "make every reasonable effort" to ensure that information used to make a decision directly affecting an individual is accurate and complete. 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 (Order 98-002 at para. 90).

[para 112] I do not find that the Public Body made every reasonable effort to ensure that the statement regarding the Complainant's hobbies and interests, as reflected in the résumé, was accurate and complete. It neither contacted the Complainant to verify the information nor do I believe that it obtained a copy of the résumé before making the statement (although I make no comment as to the basis on which the Public Body might have been authorized to collect a copy). I find that the Public Body did not explore what were easy avenues in order to verify the accuracy and completeness of the information. It therefore failed to fulfill its duty under section 35(a).

[para 113] I have found that, in all but one of the instances raised by the Complainant, the Public Body made every reasonable effort to ensure that the Complainant's personal information was accurate and complete, as provided by section 35(a) of the Act. However, I acknowledge that the Complainant has a general concern that, in making decisions that affected her, the Public Body may have used outdated or incomplete information about her. While I was mostly unable to determine that this was true in the circumstances of this inquiry, and I recognize that a Public Body cannot possibly convey every piece of information about an individual when requesting opinions or assistance from third parties, I wish to repeat a statement from a previous order regarding a public body's duty under section 35(a):

> "[E]very reasonable effort" requires that a public body take positive steps to ensure that … 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 (Order 98-002 at para. 91).

[para 114] I wish to remind the Public Body of its duty under section 35(a) of the Act, even though I only found that it failed to fulfill this duty once in this inquiry.

V. ORDER

[para 115] I make this Order under section 72 of the Act.

[para 116] I find that the Public Body had the authority to collect the Complainant's personal information, as provided by sections 33 and 34 of the Act.

[para 117] I find that the Public Body had the authority to use the Complainant's personal information, as provided by section 39 of the Act, with the exception of using the video surveillance report for the purpose of obtaining a medical status evaluation in January 2005. Under section 72(3)(e) of the Act, I order the Public Body to stop using the surveillance videotape or report in contravention of Part 2 of the Act. However, these records may be retained by the Public Body as part of the past adjudication of the Complainant's claim.

[para 118] I find that the Public Body had the authority to disclose the Complainant's personal information, as provided by section 40 of the Act, with the exception of disclosing – to a physician in January 2005 – the video surveillance report, the note of June 24, 2003 (regarding vacation requests and work schedule), the letter of December 19, 2001 (regarding a telephone conversation between the Complainant and the Public Body), the e-mail of January 14, 2004 (regarding shift preferences) and certain information in the letter of January 24, 2005 (regarding financial situation, family status and an appeal matter), and disclosing – to the Calgary Police Service – the letter of June 25, 2001 (regarding past medical appointments) and some of the information in the medical status examination report of January 28, 2005. Under section 72(3)(e) of the Act, I order the Public Body to stop disclosing the Complainant's personal information in contravention of Part 2 of the Act.

[para 119] I find that, in all but one instance, the Public Body made every reasonable effort to ensure that the Complainant's personal information was accurate and complete, as provided by section 35(a) of the Act. However, it failed to fulfill this duty with respect to the Complainant's personal information (regarding the contents of a résumé) in the e-mail of July 3, 2003. Under 72(3)(a) of the Act, I order the Public Body to perform its duty under section 35(a) of the Act. Specifically, I order it to make every reasonable effort to ensure that the information regarding the Complainant's résumé is accurate and complete, by verifying the information and including the timeframe to which the résumé

relates in all references to it. If it is unable to do so, the Public Body should not use the information regarding the résumé to make any decision directly affecting the Complainant.

[para 120] I further order the Public Body to notify me, in writing, within 50 days of receiving a copy of this Order that it has complied with this Order.

Wade Riordan Raaflaub
Adjudicator