ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2006-019

December 17, 2007

CALGARY POLICE SERVICE

Case File Number 3343

Office URL: www.oipc.ab.ca

Summary: The Complainant was injured while working at the Calgary Police Service (the "Public Body") and became the recipient of benefits through the Workers' Compensation Board (the "WCB"). She 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.

A private investigator engaged by the WCB, rather than the Public Body, conducted video surveillance on the Complainant in May 2002. The Adjudicator found that this was not a collection of the Complainant's personal information by the Public Body.

The Public Body recorded the details of a telephone conversation between the Complainant and her supervisor, during which the Complainant's work schedule and vacation requests were discussed. The Adjudicator found that the Complainant's personal information was collected for the purpose of managing human resources, which is an operating activity of the Public Body and therefore authorized under section 33(c) of the Act. Because the information was collected directly from the Complainant, but she was not informed of the purpose of collection, legal authority for it and contact information of a person who can answer questions, the Adjudicator found that the collection was not in accordance with the notice requirements of section 34(2) of the Act.

The note describing the telephone conversation was disclosed to a Staff Sergeant. As the Staff Sergeant was part of the Complainant's management team, the Adjudicator found that disclosure was authorized under section 40(1)(x) of the Act, for the purpose of managing or administering personnel. He further found that the use of the note by the supervisor and Staff Sergeant was authorized under section 39(1)(a) of the Act, on the basis that the purpose of the use was the same as or consistent with the purpose of collection.

The note describing the telephone conversation was disclosed to and used by the Safety and Claims Unit of the Public Body. While the note included some information about the Complainant's workers' compensation case, the Adjudicator found that the Public Body did not explain why the Safety and Claims Unit needed to know all of the information in the note. He therefore found that the Public Body did not establish an authorized disclosure and use of some of the information under sections 40 and 39 of the Act, respectively.

The Adjudicator found that the note describing the telephone conversation had been disclosed by the Public Body to the WCB. As it contained information that was not necessary to carry out an authorized purpose of disclosure in a reasonable manner, he concluded that the Public Body did not establish that the disclosure of certain information was authorized under the Act.

The Adjudicator found that there was insufficient evidence to establish that the Public Body had disclosed to the WCB certain medical information in May 2002. Conversely, he found that the Public Body had disclosed the Complainant's previous medical condition and treatment in April 2003, her psychological information in December 2001, and her hobbies and interests as reflected in a résumé in July 2003. As the disclosure of the Complainant's previous medical condition and treatment was to ascertain whether they may have contributed to her workplace injury, and disclosure of the hobbies and interests was presumably to ascertain whether they were consistent with the Complainant's disability, the Adjudicator found that disclosure was authorized under section 40(1)(l) of the Act, for the purpose of determining or verifying the Complainant's suitability or eligibility for a program or benefit. The Adjudicator found that the Public Body did not establish an authorized disclosure of the psychological information.

The Adjudicator found that there had been a collection and use by the Public Body of the Complainant's personal information contained in a medical status examination report dated January 28, 2005. Although the Public Body had explained its authority to collect and use the Complainant's personal information under the *Workers' Compensation Act* generally, the Adjudicator found that it did not establish an authorized collection and use of certain information in the medical report. For example, the Adjudicator found that information regarding the Complainant's prior medical conditions and non-work-related activities were not relevant to accommodating her in the workplace.

Section 35(a) of the Act requires a public body to make every reasonable effort to ensure that personal information is accurate and complete if the public body uses the information

to make a decision that directly affects an individual. The Adjudicator found that the information in the note describing the telephone conversation was used to make decisions directly affecting the Complainant, namely decisions regarding her work schedule and vacation, but that she had not established that her personal information was inaccurate or incomplete. The Adjudicator therefore found that the Public Body had met its duty under section 35(a). In other instances, the Adjudicator found that the Public Body had no duty under section 35(a), as the Complainant had not pointed to a related decision of the Public Body that directly affected her.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(n), 2(b), 33, 33(a), 33(c), 34, 34(1), 34(1)(a)(ii), 34(1)(k)(i), 34(1)(k)(ii), 34(1)(n), 34(2), 34(3), 35(a), 36(1), 38, 39, 39(1)(a), 39(4), 40, 40(1)(a), 40(1)(b), 40(1)(c), 40(1)(d), 40(1)(e), 40(1)(f), 40(1)(i), 40(1)(l), 40(1)(x), 40(4), 41, 41(a), 41(b), 69(3), 72, 72(3)(a), 72(3)(e), 72(3)(f) and 72(4); *Workers' Compensation Act*, R.S.A. 2000, c. W-15, s. 35, 44, 147 and 147(3); *Interpretation Act*, R.S.A. 2000, c. I-8, s. 10.

Authorities Cited: AB: Orders 97-009, 97-020, 98-002, 2001-018, 2001-034, F2003-017, F2005-003, F2006-002, F2006-018 and F2007-015; Reports 99-IR-02, 2000-IR-07 and F2002-IR-010. **CAN:** *R. v. Sharpe*, 2001 SCC 2, quoting E. A. Driedger, *Construction of Statutes* (2nd ed. 1983); and *Canada (Attorney General) v. JTI-Macdonald Corp.*, 2007 SCC 30.

I. BACKGROUND

[para 1] The Complainant was injured while working at the Calgary Police Service (the "Public Body") and became the recipient of benefits through the Workers' Compensation Board (the "WCB"). 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 3342 and resulting in Order F2006-018. 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

[para 5] In this inquiry, which involves alleged breaches of privacy, the Complainant has the initial burden to establish that her personal information was disclosed as she alleges; if some disclosure of personal information is proven, then the burden shifts to the Public Body to justify the disclosure(s) under the Act (Order F2003-017 at para. 21). The same allocation of burdens would apply to the collection and use of personal information. Accordingly, throughout this inquiry, the Complainant must first establish that her personal information was collected, used or disclosed by the Public Body, and if she does so, the Public Body must then establish that the collection, use or disclosure was authorized under the Act.

[para 6] 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. To establish that it collected the Complainant's personal information in accordance with the Act, the Public Body relies on the following provisions of sections 33 and 34:

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

…

(k) the information is necessary

(i) to determine the eligibility of an individual to participate in a program of or receive a benefit, product or service from the Government of Alberta or a public body and is collected in the course of processing an application made by or on behalf of the individual the information is about, or

(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,

…

(n) the information is collected for the purpose of managing or administering personnel of the Government of Alberta or the public body…

[para 7] The provisions of the Act, on which the Public Body relies to justify its use and disclosure of the Complainant's personal information, are the following:

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,

…

(4) A public body may use personal information only to the extent necessary to enable the public body to carry out its purpose in a reasonable manner.

40(1) A public body may disclose personal information only

(a) in accordance with Part 1,

(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,

(d) if the individual the information is about has identified the information and consented, in the prescribed manner, to the disclosure,

(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,

…

(i) to an officer or employee of a public body or to a member of the Executive Council, if the disclosure is necessary for the delivery of a common or integrated program or service and for the performance of the duties of the officer or employee or member to whom the information is disclosed,

…

(l) for the purpose of determining or verifying an individual's suitability or eligibility for a program or benefit,

…

(x) for the purpose of managing or administering personnel of the Government of Alberta or the public body,

…

(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.

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 8] With respect to the accuracy and completeness of personal information, 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 9] 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 to find that section 35(a) applies, an individual must say what personal information was inaccurate or incomplete and what decisions the public body made using inaccurate and incomplete personal information (Order 2001-018 at para. 54). I believe that the individual has the burden of proving the existence of inaccurate or incomplete personal information under section 35(a), given that an individual has the burden of proving that there is an error or omission in personal information held by a public body in the context of a request for correction under section 36(1) of the Act (Order 97-020 at para. 108). The individual is in a better position to address the accuracy or completeness of his or her own personal information.

[para 10] As to whether or not an individual's personal information was used by a public body to make a decision that directly affected the individual, the principle reproduced in the preceding paragraph indicates that the individual must point to some decision of the public body that he or she believes was made using inaccurate or incomplete information. Having said this, it is not necessary for me to go any further in this inquiry and address which party has the burden of proving, as opposed to suggesting, that personal information was used or not used to make a decision directly affecting the individual.

[para 11] Because the Complainant's submissions often concern the collection, use, disclosure and/or accuracy and completeness of her personal information arising in connection with the same situation or record, I intend to organize the rest of the discussion by situation or record rather than according to the issues set out in the Notice of Inquiry.

1. Video surveillance

[para 12] The Complainant submits that the Public Body contravened section 35(a) of the Act because it failed to ensure that her personal information was accurate and complete when it sent outdated and inaccurate information to the WCB in the context of a request that the WCB conduct video surveillance on her. In particular, she states that a claim that she had made about the extent of her injury was taken out of context, as it had only been true one year earlier and the Public Body had more recent medical reports indicating that her condition had improved. The Public Body denies that it ever asked the WCB to conduct video surveillance on the Complainant.

[para 13] In support of her submission, the Complainant provided a copy of an e-mail dated April 16, 2002, written by the WCB and including handwritten notes at the bottom. The e-mail is an internal request by the WCB case manager that video surveillance be conducted on the Complainant, and I find that it contains her personal information. However, the e-mail and handwritten notes do not establish that the Public Body, as opposed to the WCB, used the personal information in question to make a

decision directly affecting the Complainant. The Complainant has not pointed to a decision of the Public Body, unless she means that its decision to disclose information to the WCB was a decision that directly affected her. Even if that could amount to a decision, there is insufficient evidence on the face of the e-mail and handwritten notes to establish that the WCB learned about the Complainant's claims about the extent of her injury from the Public Body. The statement made by the WCB about the injury is not linked to the Public Body.

[para 14] As I find neither a use nor a disclosure of the Complainant's personal information by the Public Body, nor a decision on the part of the Public Body directly affecting the Complainant, I conclude that section 35(a) does not apply. The Public Body therefore had no duty to ensure the accuracy and completeness of the Complainant's personal information in this instance.

[para 15] From May 14 to 17, 2002, a private investigator engaged by the WCB conducted video surveillance on the Complainant. I address the collection of her personal information in that manner by the WCB in Order F2006-018. In this inquiry, the Complainant submits that the Public Body also collected her information through the video surveillance contrary to the Act. However, it was not this Public Body that conducted the video surveillance. I therefore conclude that it did not collect the Complainant's personal information, and do not need to address any issue regarding the purpose and manner of collection.

2. Note describing a telephone conversation

[para 16] The Complainant submits that the Public Body improperly collected, used and disclosed, and failed to ensure the accuracy and completeness of, her personal information in connection with a note, dated June 24, 2003, in which her supervisor recorded details about a telephone call between herself and the Complainant. The note contains information regarding the Complainant's work schedule, vacation requests and workers' compensation case. The information about her workers' compensation case relates both to her work schedule and the payment of her benefits. The note recorded the reasons why the Complainant preferred certain shifts or required certain days off, and indicated the supervisor's responses and suggestion for alternative solutions. The Complainant argues that the note included unnecessary and irrelevant information, such as information about her activities in relation to her mother.

a) Collection

[para 17] Under section 33(c) of the Act, a public body may collect personal information on the basis that it relates directly to and is necessary for an operating program or activity of the public body. Managing human resources is an operating activity of a public body, provided that the information collected is necessary for and relevant to managing the employee (Order F2005-003 at para. 12; Report F2002-IR-010 at paras. 15 and 17). Here, I find that the information in the note related directly to and was necessary for the management of the Complainant's workers' compensation case,

work schedule and vacation, including the information relating to the Complainant's mother. The information in relation to the Complainant's mother provided the reason why the Complainant preferred not to work certain days.

[para 18] As the personal information in the June 24, 2003 note related directly to and was necessary for managing human resources matters in relation to the Complainant, I conclude that the information was collected for an authorized purpose under section 33(c) of the Act, namely for an operating activity of the Public Body.

[para 19] The collection of personal information must also be carried out in accordance with section 34 of the Act, which reads – in its entirety – as follows:

> *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*
>
> *(i) that individual,*
>
> *(ii) another Act or a regulation under another Act, or*
>
> *(iii) the Commissioner under section 53(1)(h) of this Act,*
>
> *(b) the information may be disclosed to the public body under Division 2 of this Part,*
>
> *(c) the information is collected in a health or safety emergency where*
>
> *(i) the individual is not able to provide the information directly, or*
>
> *(ii) direct collection could reasonably be expected to endanger the mental or physical health or safety of the individual or another person,*
>
> *(d) the information concerns an individual who is designated as a person to be contacted in an emergency or other specified circumstances,*
>
> *(e) the information is collected for the purpose of determining suitability for an honour or award, including an honorary degree, scholarship, prize or bursary,*
>
> *(f) the information is collected from published or other public sources for the purpose of fund-raising,*
>
> *(g) the information is collected for the purpose of law enforcement,*

(h) the information is collected for the purpose of collecting a fine or a debt owed to the Government of Alberta or a public body,

(i) the information concerns the history, release or supervision of an individual under the control or supervision of a correctional authority,

(j) the information is collected for use in the provision of legal services to the Government of Alberta or a public body,

(k) the information is necessary

(i) to determine the eligibility of an individual to participate in a program of or receive a benefit, product or service from the Government of Alberta or a public body and is collected in the course of processing an application made by or on behalf of the individual the information is about, or

(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,

(l) the information is collected for the purpose of informing the Public Trustee or the Public Guardian about clients or potential clients,

(m) the information is collected for the purpose of enforcing a maintenance order under the Maintenance Enforcement Act,

(n) the information is collected for the purpose of managing or administering personnel of the Government of Alberta or the public body, or

(o) the information is collected for the purpose of assisting in researching or validating the claims, disputes or grievances of aboriginal people.

(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 20] The Public Body collected the Complainant's personal information in the note of June 24, 2003 directly from her, which was acceptable under section 34(1) of the Act. However, there is a notice requirement under section 34(2), by which a public body must inform an individual of the purpose for the collection, the specific legal authority for it, and the contact information of an officer or employee of the public body who can answer questions. The rationale for this is to ensure that the individual has a reasonable opportunity to raise questions and make decisions about whether to provide the information (Report 99-IR-002 at p. 5 or para. 34). It appears that notice under section 34(2) is necessary whenever there is a direct collection (Report 2000-IR-007 at para. 35).

[para 21] Although one of the issues in this inquiry is whether the Public Body had the authority to collect the Complainant's information, as provided by sections 33 and 34 of the Act, the Public Body made no submissions regarding the notice requirement set out in section 34(2). However, it is arguable that notice is not necessary under section 34(2) of the Act if a public body collects information directly from the individual, but could have done so indirectly. This is because section 34(2) states that a public body must inform the individual if it collects personal information "that *is required by* subsection 34(1) to be collected directly from the individual."

[para 22] Here, the Public Body was arguably not required to collect the information in the note directly from the Complainant, as it collected the information for the purpose of managing or administering personnel, which is a situation in which an indirect collection is authorized under paragraph 34(1)(n) of the Act. If a direct collection *was not required*, but was done anyway, it might be open to the Public Body to say that notice to the Complainant was not necessary. However, I believe that this interpretation, which I shall call the "literal" interpretation, is problematic. The literal words of subsection 34(2) appear to incorrectly rest on the assumption that a direct collection of information will only be done whenever an indirect collection is not available. The possibility that a public body may choose to collect information directly, even though not required to do so, appears to have been overlooked.

[para 23] In my view, the literal words of section 34(2) do not make sense because the determination of whether notice to the individual is necessary depends on whether the public body has the option of collecting the information indirectly (i.e., is not required to collect the information directly). The literal application of the subsection relies on what a public body can do or could have been done, rather than what it actually will do or has done. Even though a direct collection was or is intended to be made, the literal interpretation requires a consideration of the purpose or nature of the collection in order

to determine whether an indirect collection is possible under any of the enumerated situations set out in paragraphs 34(1)(a) through (o), including under *any other Act or regulation* referred to in paragraph 34(1)(a)(ii). If an indirect collection is at all available, then notice is not required. In other words, a public body's duty according to the literal words of section 34(2) depends on the hypothetical possibility of an indirect collection, rendering the provision somewhat absurd in its application. Further, I suspect that, for certain public bodies, virtually all of their operating activities may fall under one of the enumerated situations, so that the literal interpretation would mean that they would almost never have to give notice in respect of a collection of personal information.

[para 24] When "[c]onfronted with a statutory provision that, read literally, seems to make no sense, [one] should ask whether the section can be interpreted in a manner that fits the context and achieves a rational result" (*Canada (Attorney General) v. JTI-Macdonald Corp.*, 2007 SCC 30 at para. 55). Further, the modern approach to statutory interpretation is that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament" (*R. v. Sharpe*, 2001 SCC 2 at para. 33, quoting E. A. Driedger, *Construction of Statutes* (2nd ed. 1983), at p. 87). I also note section 10 of Alberta's *Interpretation Act*, which states: "An enactment shall be construed as being remedial, and shall be given the fair, large and liberal construction and interpretation that best ensures the attainment of its objects." Having found that the literal wording of section 34(2) appears not to make sense and has a problematic application, I will review the purpose of the *Freedom of Information and Protection of Privacy Act* and what I believe to be the scheme and intent behind section 34 in order to determine the proper interpretation.

[para 25] One of the principles of the *Freedom of Information and Protection of Privacy Act* is to control the manner in which a public body may collect personal information from individuals [section 2(b)]. The objective of *controlling* the collection of information suggests that the provisions of the Act should be interpreted in a way that restricts the conduct of public bodies, and protects the interests of the individual, with respect to the collection of personal information. In the context of section 34, this gives rise to two general principles in relation to fair information practices. The first is that direct collection of personal information is the preferred norm [subsection 34(1)]. The second is that individuals are entitled to know the purpose for which their personal information is being collected, along with the legal authority for the collection and the contact information of a person who can answer questions about the collection [subsection 34(2)].

[para 26] At the same time, section 34 recognizes that there are two exceptions to these general principles. The first is that indirect collection of personal information is authorized in the limited circumstances set out in subsection 34(1). The second is that indirect collection (where it would not normally be available) or direct collection without notice to the individual (where notice would normally be required) is authorized in a situation that falls under subsection 34(3). Subsection 34(3) states that subsections 34(1)

and 34(2) do not apply if it could reasonably be expected that the information collected would be inaccurate.

[para 27] To say that a public body is not required to fulfill the notice requirements of subsection 34(2) if it chooses to, but does not have to, collect information directly would defeat fair information practices and the overall intent of section 34. It would allow public bodies to collect information directly – but surreptitiously – from individuals simply on the basis that they had an option, which they did not use, to collect the information indirectly. In my view, this would amount to conscripting individuals into disclosing information about themselves, and would go against the general principle in section 34 according to which individuals should know the purpose and legal authority for a collection of information before they provide their own personal information.

[para 28] Accordingly, I conclude that a public body either may collect information indirectly, and without notice, on one of the limited bases set out in subsection 34(1) or – if it is required to or chooses to collect information directly – it should meet the notice requirements set out in subsection 34(2) (unless subsection 34(3) applies). This interprets the exceptions in section 34 narrowly and gives a fair, large and liberal construction that best ensures the attainment of the objects of the Act. I shall call this interpretation of section 34 the "modern" interpretation.

[para 29] As discussed above, the literal interpretation of section 34(2) does not make sense, as a public body's duty to give notice to the individual depends on a hypothetical analysis, either before or after the fact, of whether an indirect collection is or was available. The modern interpretation avoids the need to analyze whether an indirect collection could have occurred even though the public body opted for a direct collection. Once a public body makes the decision to collect information directly, notice to the individual becomes required, without any need to determine whether some or all of the information could have been collected indirectly. The modern interpretation also precludes a public body, who did not give notice to the individual on a direct collection, from later saying that it intended to use the information for one of the limited reasons set out in subsection 34(1) when that was not the intention at the time of the collection.

[para 30] From a drafting perspective, I believe that the modern interpretation of section 34 is the one that gives meaning to the decision to place the exception that is found in subsection 34(3) in a separate subsection, rather than as one of the exceptions that authorize indirect collection in subsection (1). The literal interpretation of section 34(2) means that public bodies have two choices if indirect collection is available under subsection 34(1): to collect personal information indirectly or to collect personal information directly without notice. If that were the proper interpretation, the exception in subsection 34(3) – which applies when there is a reasonable expectation that the information collected would be inaccurate – would arguably have been more appropriately placed as a further exception under subsection 34(1). This is because once a public body determined that indirect collection was authorized for the particular reason, the literal interpretation of subsection 34(2) would *already* allow it to collect the

information directly without notice. There would be no need to place the exception regarding inaccurate information in a separate subsection 34(3).

[para 31] Only by interpreting subsection 34(2) as requiring notice whenever there is a direct collection does it appear to make sense to have an exception in a separate subsection 34(3) that overrides *both subsections 34(1) and 34(2)*. The exception becomes available both when indirect collection is not already authorized by subsection 34(1) and when notice is required, as a result of any direct collection, under subsection 34(2). In other words, subsection 34(3) appears to have been intended to override *two separate rules* in subsections 34(1) and 34(2). The modern interpretation of section 34 gives rise to those two rules: that direct collection of personal information is normally required and that notice to the individual is normally required for every direct collection.

[para 32] Given the problematic practical application of section 34(2) if interpreted literally, and my view that the modern interpretation better reflects the purpose of the Act and the context and intent of section 34, I conclude that whenever a public body collects information directly from an individual, it must fulfill the notice requirements set out in subsection 34(2), unless subsection 34(3) applies.

[para 33] Here, the Public Body collected the information in the note of June 24, 2003 directly from the Complainant. However, it did not address in its submissions the notice requirements set out in section 34(2) of the Act. The Complainant alleged a breach of section 34 with respect to the note, and one of her specific concerns was that she was not aware that her personal information was being documented (i.e., collected) by her supervisor. I find that she alleged that her personal information was collected without proper notice under subsection 34(2) but that the Public Body did not discharge the burden of proving that it informed the Complainant of the purpose of collection, the specific legal authority for it, and a contact person within the Public body who could answer her questions.

[para 34] Because the Public Body offered no evidence as to whether it met the notice requirements under section 34(2), it is not necessary for me to determine how those requirements could have been fulfilled, such as by a general notice at the start of the relationship between the Public Body and the Complainant, a specific notice at the time of the telephone conversation on June 24, 2003, or possibly a notice after the collection to mitigate the failure to give one prior to the collection.

b) Disclosure to and use by management

[para 35] The Complainant submits that a copy of the June 24, 2003 note was improperly forwarded to a Staff Sergeant. Under section 40(1)(x) of the Act, a public body may disclose personal information for the purpose of managing or administering personnel of the public body. I find that the disclosure of the note to the Staff Sergeant was for this purpose, as she was part of the Complainant's management team, and the more immediate supervisor indicated in the note that the Complainant intended to call the Staff Sergeant to further discuss certain work-related matters reflected in it. I therefore find that disclosure of the note to the Staff Sergeant was authorized.

[para 36] The Complainant does not specifically explain why she believes that the note of June 24, 2003 was improperly used by her supervisor or the Staff Sergeant. I nonetheless find that there was a use of the information, as the note states that the Complainant wished to have certain days off and would have to discuss this with the Staff Sergeant. I therefore believe that, after the note was prepared, it was used by the supervisor and Staff Sergeant in their management of the Complainant's work schedule and vacation. At the same time, I have no evidence that the note was used by the supervisor or the Staff Sergeant other than for the purpose of managing her as an employee. I therefore find that the use was authorized under section 39(1)(a) of the Act, on the basis that the purpose of the use was the same as or consistent with the purpose of collection.

c) Disclosure to and use by the Safety and Claims Unit

[para 37] The Complainant submits that a copy of the June 24, 2003 note was improperly forwarded to the Safety and Claims Unit of the Public Body. The Public Body responds that disclosure of the note to the Safety and Claims Unit was authorized in order to allow it to administer the Complainant's case and ensure that she received the appropriate benefits. The Public Body does not cite a particular section of the Act in support, but the suggestion is that disclosure was authorized under section 40(1)(x) for the purpose of managing or administering personnel, or under section 40(1)(h), which allows a public body to disclose personal information to an officer or employee of the public body if the information is necessary for the performance of the duties of the officer or employee.

[para 38] However, section 40(4) of the Act allows the disclosure of personal information only to the extent necessary to carry out an authorized purpose in a reasonable manner. Even if disclosure of certain information in the note was for an authorized purpose, I do not find that the Public Body has established that disclosure of all of the personal information in it was for the purpose of administering personnel or necessary for the performance of the duties of individuals within the Safety and Claims Unit. While the note includes some information about the Complainant's workers' compensation case, the Public Body does not explain why the Safety and Claims Unit needed to know all of the other details regarding the Complainant's desired work shifts and vacation requests. I therefore find that disclosure of some of the information in the June 24, 2003 note to the Safety and Claims Unit was not authorized.

[para 39] I find that the Complainant has established a use of the note by the Safety and Claims Unit, as the Public Body itself suggests that the note would have been used to administer the Complainant's claim and benefits. The Public Body does not specifically explain the basis on which use of the note was authorized under the Act, but does cite section 39(1)(a) (purpose the same as or consistent with collection) in its general submissions.

[para 40] Some of the information in the note of June 24, 2003 was collected by the Complainant's supervisor for the purpose of administering her workers' compensation

case in the context of managing her as an employee, which is an operating activity of the Public Body. The supervisor indicated in the note that the Complainant had concerns about the payment of her benefits but that she, the supervisor, was not knowledgeable enough to address them. This is presumably one of the reasons why the note was forwarded to the Safety and Claims Unit. I therefore find that the use of some of the information in the note by the Safety and Claims Unit was for the same purpose as the information was collected. However, other information in the note was collected for the purpose of managing the Complainant's work schedule and vacation, which I find was not the same purpose for which the information was used when administering the Complainant's WCB claim and benefits.

[para 41] However, the Safety and Claims Unit may also use the information in the note for a purpose that is consistent with collection. Under section 41 of the Act, a use of personal information is consistent with the purpose for which the information was collected if the use has a reasonable and direct connection to that purpose and is necessary for performing the statutory duties or operating a legally authorized program of the public body.

[para 42] Some of the information about the Complainant's desired work schedule in the June 24, 2003 note arguably had a reasonable and direct connection to the Safety and Claims Unit's administration of her WCB claim, as some of the Complainant's work preferences were indicated to be due to her disability. The way in which her disability influences the shifts that she is able work is also possibly information that is necessary for performing the Public Body's statutory duties, such as reporting information to the WCB, or operating a legally authorized program of the Public Body, being the administration of WCB claims by the Safety and Claims Unit.

[para 43] However, section 39(4) of the Act allows the use of personal information only to the extent necessary to carry out an authorized purpose in a reasonable manner. I fail to see how certain information in the note may have been used by the Safety and Claims Unit on the basis that the purpose was consistent with collection. For instance, the note contained information about the Complainant's vacation requests and activities in relation to her mother. This collection was for the purpose of managing her vacation, which I find did not have a reasonable and direct connection to administering her WCB claim and was not necessary for that aspect of the Public Body's operating activities. As the Public Body has not established that all of the information in the note of June 24, 2003 was used by the Safety and Claims Unit for an authorized purpose, I conclude that the use of some of the information was unauthorized.

d) Disclosure to the WCB

[para 44] The Complainant submits that the Public Body disclosed the note of June 24, 2003 to the WCB contrary to the Act. The Public Body states that it has no information suggesting that the note was provided to the WCB. However, there is a stamp on the copy of the note submitted by the Complainant indicating that the WCB

obtained it. As no other source of the information is apparent to me, I find that the note was disclosed to the WCB by the Public Body.

[para 45] On the possibility that the note was disclosed to the WCB, the Public Body submits that disclosure was authorized because it related to the compensability of the Complainant's injury. The suggestion is that disclosure was authorized under section 40(1)(f) and (l) of the Act, which permit, respectively, disclosure for any purpose in accordance with an enactment (i.e., the *Workers' Compensation Act*) and disclosure for the purpose of determining or verifying an individual's suitability or eligibility for a program or benefit (i.e., in the context of her WCB claim).

[para 46] Some of the information in the note of June 24, 2003 might have been disclosed in accordance with the *Workers' Compensation Act* or for the purpose of verifying the Complainant's eligibility for WCB benefits, as the Public Body may have wished to confirm that her stated capacity to work certain days or shifts was consistent with her disability. However, I do not believe that the Public Body disclosed personal information to the WCB only to the extent necessary to enable it to carry out an authorized purpose in a reasonable manner, as required by section 40(4). For instance, information about the Complainant's vacation requests and activities in relation to her mother was not necessary in order to verify her ability to work certain shifts, and I find that it was not reasonable to disclose it.

[para 47] The Public Body has not established that all of the personal information in the note was disclosed to the WCB in accordance with section 40 of the Act. Even if some of the information was disclosed to the WCB for an authorized purpose, I do not believe that the Public Body disclosed the Complainant's 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). I therefore conclude that disclosure of some of the information in the June 24, 2003 note to the WCB was not authorized.

e) Accuracy and completeness of information

[para 48] The Complainant submits that the Public Body failed to make every reasonable effort, under section 35(a) of the Act, to ensure the accuracy and completeness of her personal information in the note of June 24, 2003. She states that it contains her supervisor's opinions and a skewed version of certain things that she, the Complainant, said.

[para 49] The June 24, 2003 note contains the Complainant's personal information. I also find that there was a use of the information in the note to make decisions directly affecting the Complainant, namely decisions to grant her certain work shifts or days off. However, I do not find that the Complainant has established that her personal information was inaccurate or incomplete. She has not indicated what specific information in the note contains errors or omissions, or offered what she believes to be the correct or complete facts. I therefore find that the Public Body met its duty under section 35(a) of the Act.

3. Medical information

[para 50] The Complainant submits that the Public Body improperly collected and disclosed personal information in a medical report. She also submits that it improperly disclosed non-work-related diagnoses and treatments, namely information regarding a prior medical condition and psychological information.

a) Medical report in May 2002

[para 51] The Complainant submits that a particular medical report was inappropriately retained by the Public Body in May 2002, rather than forwarded to City of Calgary Employee Services, and that the Public Body disclosed information in the report to the WCB. However, I do not have evidence to establish that this particular medical report was collected, or information in it was disclosed, by the Public Body. There is an affidavit from the Safety and Claims Coordinator of the Public Body stating that she did not receive, retain or disclose the medical information in question in May 2002. I therefore do not find that the Complainant has discharged the burden of establishing a collection or disclosure of her personal information in this instance.

b) Prior medical condition and treatment

[para 52] In relation to a separate instance, the Complainant states that the Public Body improperly disclosed information regarding a prior medical condition and treatment to the WCB. The Public Body denies this, submitting that the information was obtained by the WCB through a letter from a third party physician. However, the letter from the physician does not state the nature of the medical condition or treatment. Still, the Public Body submits that the information was not disclosed *by it* to the WCB.

[para 53] However, there is an e-mail, dated April 2, 2003 from an employee of the Public Body to the WCB, in which the medical condition and treatment are mentioned. Although the e-mail does not expressly refer to the Complainant, it is addressed to her particular case manager at the WCB, mentions her specific medical condition and treatment, and mentions her specific workplace injury. I recognize that the e-mail of April 2, 2003 was submitted by the Complainant *in camera*, and the Public Body therefore did not have the opportunity to address it specifically. Still, because the medical condition and treatment are mentioned in an e-mail written by the Public Body, I conclude that the Public Body disclosed this personal information of the Complainant, whether or not it was otherwise known to the WCB through another source.

[para 54] I must now determine whether the Public Body had the authority to disclose the Complainant's medical information under the Act. I do not intend to address whether or not the Public Body had the authority to collect the information, as the Complainant has not specifically complained about this.

[para 55] The e-mail of April 2, 2003 asks the WCB to find out whether the Complainant's prior medical condition and treatment might have contributed to her

workplace injury. The implication is that if it did, she may not be entitled to WCB benefits. On review of the Public Body's general submissions regarding its authority to disclose information, I find that disclosure of the information in question was authorized under section 40(1)(l) of the Act because it was for the purpose of determining or verifying the Complainant's suitability or eligibility for a program or benefit.

c) Psychological information

[para 56] The Complainant submits that the Public Body disclosed psychological information about her to the WCB. I find, on a balance of probabilities, that there was a disclosure by the Public Body, based on a file note of the WCB dated December 13, 2001, which the Complainant submitted *in camera*. The file note suggests that the psychological information was obtained by the WCB from the Public Body, as the note refers to the "EMP", meaning the Complainant's employer (i.e., the Public Body).

[para 57] It is possible, however, that that there was no disclosure of "personal information" within the meaning of the Act. Under section 1(n), "personal information" is *recorded* information, and the information that was *subsequently recorded* in the WCB file note may or may not *yet have been recorded* at the time of the disclosure by the Public Body. On the other hand, it is possible that there is a disclosure of personal information under the Act regardless of the timing of the recording of the information. By analogy, there is a collection of personal information under the Act, provided that it is recorded prior to, at the time of or after obtaining the information (Order F2006-002 at paras. 11 to 13). If personal information may be collected within the meaning of the Act, even though not yet recorded at the time of obtaining the information, it is arguable that personal information may be disclosed within the meaning of the Act, even though not yet recorded at the time of the disclosure. I recognize, however, that a public body cannot control whether or not another public body records information that the first public body discloses.

[para 58] Although I raise the foregoing, I believe, in the circumstances of this inquiry, that the information was likely recorded by the Public Body prior to its disclosure, given the nature of the psychological information in question. The information concerns the Complainant's relationship with another program or service of the Public Body, and I find it unlikely that the circumstances of that relationship were only disclosed orally within the Public Body, or by the Complainant to the Public Body, and not recorded. I find that the Complainant has discharged the burden of establishing that the Public Body disclosed to the WCB her "personal information," as defined by the Act.

[para 59] On review of the Public Body's general submissions regarding its authority to disclose information, I am unable to determine which provisions of section 40 of the Act may have authorized the disclosure of the psychological information. I do not believe that it was for the purpose of verifying the Complainant's eligibility for benefits under section 40(1)(l), as her workplace injury was physical not psychological. I have not been shown that disclosure was in accordance with an enactment (e.g., the

Workers' Compensation Act) authorizing the disclosure under section 40(1)(f), that disclosure was necessary for the delivery of a common or integrated program of the Public Body and the WCB under section 40(1)(i), or that disclosure was authorized under any of the other provisions of section 40 reproduced by the Public Body in its submissions.

[para 60] Therefore, in contrast to the disclosure of the Complainant's prior medical condition and treatment, I find that the Public Body has not discharged its burden of proving an authorized disclosure of the psychological information. However, because I recognize that the Public Body did not have the opportunity to specifically address the WCB file note of December 13, 2001, I will provide a justification for my conclusion that the burden of proof was not met.

[para 61] The Complainant submitted the WCB file note of December 13, 2001 and other documentation *in camera*. As the complaint in this inquiry concerns the Public Body's allegedly unauthorized collection, use and disclosure of the Complainant's information, it is reasonable that the Complainant would wish to limit further disclosures of her personal information to the Public Body. I therefore do not question the appropriateness of the submission of the file note of December 13, 2001 *in camera*.

[para 62] The acceptance of *in camera* submissions in an inquiry is permitted by section 69(3) of the Act:

> *69(3) The person who asked for the review, the head of the public body concerned and any other person given a copy of the request for the review must be given an opportunity to make representations to the Commissioner during the inquiry, but no one is entitled to be present during, to have access to or to comment on representations made to the Commissioner by another person.* [Emphasis added.]

The equivalent of section 69(3) in other jurisdictions has been held to deviate from the normal rules of procedural fairness, including the right to hear the evidence of the other party (Order 97-009 at paras. 36 and 42).

[para 63] Given the foregoing, the Public Body does not have the right to see the December 13, 2001 file note. More importantly, I do not believe that the Public Body has been prejudiced by its inability to specifically respond to that document, even though it has the burden of proving that disclosure of the psychological information of the Complainant was authorized. The Complainant adequately summarized, in her open submissions made available to the Public Body, the nature of the psychological information that she believed was improperly disclosed. I believe that the Public Body sufficiently knew the case it had to meet in order to discharge the burden of proving an authorized disclosure.

[para 64] However, in its rebuttal brief, the Public Body made no alternative submission to explain why disclosure of the psychological information could have or

would have been authorized in the event that a disclosure was found. It simply stated that an employee could not recall disclosing this information. This is in contrast to the Public Body's choice to make an alternate submission as to whether disclosure of the June 24, 2003 note describing the telephone conversation was authorized, even though its first submission was that it was not disclosed to the WCB by the Public Body.

[para 65] Although it made submissions to explain its authority to disclose the Complainant's personal information generally, the Public Body did not specifically explain why it would have been authorized to disclose the psychological information, and I was unable to apply the general submissions myself (as I could with respect to disclosure of the Complainant's prior medical condition and treatment).

4. Medical status examination report from the WCB

[para 66] The Complainant has a general concern about the collection of her personal information by the Public Body from the WCB. She states that her employer is actually the City of Calgary and that the Public Body therefore had no authority to collect certain of her information in the context of her WCB file. The Public Body responds that it has the responsibility to administer workers' compensation claims on behalf of the City of Calgary in respect of certain workers.

[para 67] In Order F2006-018 (at para. 82), I conclude that I do not have sufficient evidence to ascertain which body is the Complainant's employer for the purpose of the *Workers' Compensation Act*. That remains true for this inquiry. In the absence of such evidence, I will assume that the Public Body 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*.

[para 68] Although the Complainant submits that there was ongoing unauthorized collection and use of her personal information by the Public Body in relation to her WCB file, I can only address specific situations. She notes one situation in which her medical status examination report (also referred to as a return to work assessment) dated January 28, 2005 was circulated for a meeting on February 10, 2005. The meeting was attended by certain representatives of the Public Body, namely the Complainant's supervisor, a staff sergeant and safety and claims clerks. The Complainant argues that it was inappropriate for the entire report to be reviewed and discussed. While she acknowledges that the Public Body requires her work restrictions and certain information to accommodate her needs in the workplace, she submits that it has no authority to know her other medical or personal information.

a) Collection

[para 69] I find that the medical examination report was collected by the Public Body, as an e-mail written by an employee of the Public Body, dated February 7, 2005, states that "we have a report from the MD which clearly spells out the rehab[ilitation] plans." The Public Body therefore has the burden of proving that the collection was

authorized under the Act. While it does not specifically address the medical examination report, the Public Body states in its general submissions that it had the authority to collect the Complainant's personal information under paragraphs 33(a) (collection expressly authorized by an enactment) and (c) (information for an operating program or activity) of the Act.

[para 70] In submitting that its general collection of the Complainant's personal information was expressly authorized by an enactment, the Public Body cites the following sections of the *Workers' Compensation Act*:

> *35 On the written request of the employer of an injured worker, the Board shall provide the employer with a report of the progress being made by the worker.*
> …
>
> *147(1) No member, officer or employee of the Board and no person authorized to make an investigation under this Act shall, except in the performance of that person's duties or under authority of the Board, divulge or allow to be divulged any information obtained by that person in making the investigation or that comes to that person's knowledge in connection with the investigation.*
>
> *(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 that person in that person's 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 or territory.*
>
> *(3) Notwithstanding subsections (1) and (2) and section 34(4), where a matter is being reviewed or appealed under section 46 or 120,*
>
> *(a) the worker, or the worker's personal representative or dependant in the case of the death or incapacity of the worker, or the agent of any of them, and*
>
> *(b) the employer or the employer's agent*
>
> *are entitled to examine all information in the Board's files that is relevant to the issue under review or appeal, and those persons shall not use or release that information for any purpose except for the purpose of pursuing the review or appeal.*

[para 71] Section 147(3) of that *Workers' Compensation Act* entitles an employer to examine all relevant information in the WCB's files where a matter under that Act is being reviewed or appealed. However, it is not my understanding that the medical

examination report was obtained by the Public Body in February 2005 in the context of a review or appeal. An e-mail of the Public Body dated February 4, 2005 indicates that the meeting was "to discuss the results of [a] recent medical [the Complainant] had done as well as the plans to gradually increase her hours." In other words, the purpose of obtaining the report and holding the meeting was to discuss a return to work plan.

[para 72] I am also not certain that the medical report was obtained under section 35 of the *Workers' Compensation Act*, which allows an employer, on a written request, to obtain from the WCB a report of the progress being made by a worker. The medical report is not clearly a progress report, as it is entitled a "return to work assessment" and was prepared by a physician rather than the WCB. However, it might arguably be construed that the medical report was a "progress report" within the meaning of section 35 of the *Workers' Compensation Act*. I am also aware that section 44 of that Act entitles an employer to be advised of any determination of the entitlement of a worker to compensation under that Act, including a summary of the medical reasons.

[para 73] I am prepared to assume that some of the information in the medical examination report was collected by the Public Body under section 33(a) of the *Freedom of Information and Protection of Privacy Act*, on the basis that the collection was authorized by the *Workers' Compensation Act*. Because a plan for an employee to return to work is part of human resources management, the Public Body's collection of certain of the Complainant's personal information in the report may also have been authorized on the basis that the information related directly to and was necessary for an operating program or activity of the Public Body under section 33(c) of the Act. However, I do not find that all of the information in the report could be collected on either of these bases.

[para 74] Although I have a copy of the medical examination report and intend to refer to it, I recognize that the Public Body did not specifically address it as evidence in its submissions to this inquiry. However, the Complainant specifically alleged the unauthorized collection and use of her personal information in the medical examination report by the Public Body in her initial submissions, and I therefore believe that the Public Body was sufficiently aware of the case that it had to meet in its rebuttal. Further, because I have found that the report was collected by the Public Body, I necessarily believe that a copy of it was or is in its possession. It therefore had the opportunity to address the report as evidence, without my advising them that I was specifically planning to refer to it.

[para 75] In addition to information pertaining to her workplace injury, employment history and current ability to perform work-related functions, the medical examination report contains 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 fail to see how this information relates directly to and is necessary for the operating activity of developing a return to work plan, or how it is reasonably part of a progress report or summary of entitlement to compensation within the meaning of certain provisions of the *Workers' Compensation Act*.

[para 76] The Public Body raised sections 33(a) and (c) of the *Freedom of Information and Protection of Privacy Act* as authority for its collection of the Complainant's personal information. However, it has not established that all of the information in the medical status examination report was collected in accordance with another enactment under section 33(a). As some of the information in the report did not relate directly to and was not necessary for the purpose of an operating activity of the Public Body, I also do not find that collection was authorized under section 33(c) of the Act. I therefore conclude that the collection of certain information in the medical status examination report was not for an authorized purpose.

[para 77] In her submissions regarding the medical report, the Complainant does not specifically allege a contravention of section 34 of the Act, in relation to the manner of collection or the requirement that she be informed about the collection. I will therefore not address whether or not the report was collected by the Public Body in accordance with section 34.

b) Use

[para 78] I find that there was a use of the medical status examination report by the Public Body, given that e-mails of an employee of the Public Body, dated February 4 and 7, 2005, indicate that the results of the report were to be discussed at an upcoming meeting with a view to developing a return to work plan for the Complainant. If some of the information in the medical examination report was collected for an authorized purpose under section 33(a) (collection authorized by another enactment) or section 33(c) (information for an operating program or activity) of the Act, the use of that information may have been authorized under section 39(1)(a), on the basis that it was for a purpose for which the information was collected or for a use consistent with that purpose.

[para 79] However, section 39(4) of the Act permits a public body to use personal information only to the extent necessary to enable it to carry out its purpose in a reasonable manner. Even if some of the information in the medical examination report was necessary for the Public Body to know the Complainant's progress, understand her entitlement to compensation or develop a return to work plan, I find that other information in the report was not necessary to carry out any of those purposes in a reasonable manner. Knowledge of the Complainant's unrelated conditions, non-work-related activities and details of her treatment and medical examinations was not reasonably required in order to know her progress or entitlement, conduct the meeting in February 2005, or accommodate her in the workplace.

[para 80] As I find that the Public Body used more information in the medical report than was necessary to carry out an authorized purpose in a reasonable manner, I conclude that the use of certain information in the report was not authorized under section 39(4) of the Act. While I have attempted to apply the Public Body's general submissions to the specific situation, I find that the Public Body has not discharged its burden of establishing that all of the Complainant's personal information contained in the medical status

examination report of January 28, 2005 was collected and used in accordance with the Act.

5. Other documents

[para 81] The Complainant submits that the Public Body contravened the Act in relation to information contained in her résumé and various other documents.

a) Résumé

[para 82] The Complainant submits that the Public Body improperly used and disclosed, and failed to ensure the accuracy and completeness of, her personal information when it advised the WCB that her résumé indicated certain information about her hobbies and interests. She states that the résumé was outdated, that the Public Body knew this, and that, in any event, the résumé did not contain the information that the Public Body said it did.

[para 83] In an e-mail to a physician dated July 3, 2003, the WCB states that it requested the Complainant's résumé from the Public Body and goes on to indicate her hobbies and interests as reflected in the résumé. While the WCB does not expressly state that it learned the contents of the résumé from the Public Body, the whole of the e-mail is prefaced by a statement that the WCB case manager just got off the phone with the Public Body. I therefore find, on a balance of probabilities, that the WCB orally disclosed the Complainant's personal information that was recorded in the résumé (though not necessarily the résumé itself).

[para 84] The disclosure of the Complainant's hobbies and interests was presumably to ascertain whether they were consistent with her disability and whether she was entitled to WCB benefits. I therefore find that disclosure was authorized under section 40(1)(l) of the Act, for the purpose of determining or verifying the Complainant's suitability or eligibility for a program or benefit.

[para 85] In order for a public body to be required to make every reasonable effort to ensure that information is accurate and complete, section 35 of the Act 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). In other words, there must be some evidence that the public body used the individual's personal information to make a decision about him or her in order for section 35(a) to apply (Order 2001-034 at para. 34).

[para 86] The e-mail of July 3, 2003 contains the Complainant's personal information. In Order F2006-018 (at paras. 110 to 112), I address the contents of the résumé as they relate to the duty of the WCB, as opposed to this Public Body, under section 35(a) of the Act, concluding that there was inaccurate information about the résumé in the e-mail. However, the inaccurate information is contained in a WCB document, not a document of the Public Body, and I do not find that the Complainant has

pointed to a decision directly affecting her that the Public Body made using the information in the résumé. The Complainant acknowledges that it is the WCB and the physician who make decisions directly affecting her, although she argues that these decisions are based on inaccurate statements by the Public Body.

[para 87] While public bodies should certainly always endeavour to use and disclose personal information that is accurate and complete, the Act imposes the duty under section 35(a) on a public body only if it used or will use the information to make a decision that directly affects the individual. Here, I do not believe that the Public Body's disclosure of the Complainant's personal information to the WCB amounts to a decision of the Public Body that directly affected her. At most, a decision to disclose may be a decision that *indirectly* affects her. With respect to the adjudication of her claim for workers' compensation, it is the WCB that makes the decisions that *directly* affect her.

[para 88] I recognize that section 35 of the Act incorporates a fundamental principle of fair information practices and emphasizes the importance of data quality because its absence may lead to serious consequences (Order 98-002 at para. 86). I also recognize that in providing information to the WCB, an employer is in a position to influence a decision that the WCB makes. However, when an employer provides information to the WCB in order for the latter to make a decision that directly affects an individual, section 35(a) of the Act imposes the duty regarding accuracy and completeness on the WCB.

[para 89] With respect to the information about the Complainant's résumé in the July 3, 2003 e-mail, I find that the Public Body has no duty to ensure its accuracy and completeness under section 35(a) of the Act.

b) Other inaccurate or incomplete information

[para 90] The Complainant submits that there is inaccurate information regarding a prior physical condition in a handwritten note made in the margin of a letter dated June 25, 2001 from a physician to the WCB. She argues that the inaccurate information was provided to the WCB by the Public Body, and that the Public Body therefore failed to ensure that her personal information was accurate and complete. However, it is the WCB, not the Public Body, that may or may not use the information regarding the prior condition to make a decision directly affecting the Complainant (such as her entitlement to benefits). Although I find that there is personal information about the Complainant in the June 25, 2001 letter, the Complainant has not pointed to a decision directly affecting her on the part of the Public Body.

[para 91] The Complainant submits that the Public Body failed to ensure the accuracy and completeness of her personal information when it sent an e-mail dated to April 29, 2004 to the WCB, in which the Public Body reproduced only part of a quotation from a physician's letter and therefore changed the meaning. The e-mail contains the Complainant's personal information. Again, however, the Complainant has raised no decision on the part of the Public Body directly affecting her. It is instead the WCB that

may use the information reproduced from the physician's letter, and moreover, it would have possessed a copy of the complete letter containing the physician's comments.

[para 92] The Complainant points to other instances where she submits that the Public Body failed to make every reasonable effort to ensure that her personal information was accurate and complete. They relate to a WCB file note dated May 6, 2002, the same e-mail of July 3, 2003 discussed above, and a memo dated October 17, 2003 from a physician to the WCB. I find that all of these contain personal information about the Complainant. The Complainant submits that the file note and memo contain inaccurate information about her outside activities. She submits that the e-mail contains inaccurate information about her attendance at work, the number of hours she works per week, her claims about the extent of her injury, and her outside activities.

[para 93] The file note of May 6, 2002 and e-mail of July 3, 2003 indicate that certain information was obtained by the WCB from the Public Body. However, like the records discussed above, these records do not suggest that the Public Body used the Complainant's personal information to make a decision directly affecting her. Although the memo of October 17, 2003 from a physician to the WCB repeats the Complainant's hobbies and interests, it too does not establish that a decision directly affecting the Complainant was made by the Public Body.

[para 94] Moreover, most of the instances of inaccurate or incomplete personal information alleged by the Complainant involve records in the possession of the WCB, rather than the Public Body. Section 35(a) cannot require one public body to make reasonable efforts to ensure that accuracy and completeness of information in the possession of another public body. Even if the same personal information that is in records of the WCB was used by the Public Body to make decisions directly affecting the individual, the duty under section 35(a) can only apply to the extent that the Complainant's personal information is also contained in records of the Public Body.

[para 95] As I am unable to determine that the Public Body used inaccurate and incomplete information in its own records to make decisions directly affecting the Complainant, I conclude that section 35(a) does not apply to the situations just discussed. The Public Body has no duty to make every reasonable effort to ensure that the Complainant's personal information is accurate and complete in relation to the letter of June 25, 2001, the e-mail of April 29, 2004, the file note of May 6, 2002, the e-mail of July 3, 2003 and the memo of October 17, 2003.

[para 96] Section 35(a) of the Act does not require public bodies *always* to make reasonable efforts to ensure that an individual's personal information is accurate and complete, as the duty is limited to situations where the information was or will be used to make a decision directly affecting the individual. Moreover, even though other public bodies may be involved in providing or exchanging information, section 35 places the duty on the public body making the decision and who has the information in its records. Having said this, I do not preclude the possibility that an employer, and not just the WCB, might use information collected or disclosed in the context of the *Workers'*

Compensation Act to make a decision directly affecting an individual, have that information in its own records and therefore be subject to the duty under section 35(a).

7. Other privacy concerns

[para 97] The Complainant has a generally stated concern regarding an e-mail that she wrote to a supervisor on January 14, 2004, in which she expressed an interest in certain positions. The Complainant submits that "what started out as my simple expression of interest got twisted around into them accusing me of not wanting to work more hours." As the Complainant has not clearly alleged a contravention of the Act by the Public Body, I will not address this further.

[para 98] The Complainant submits that information relating to a human rights complaint was disclosed by the Public Body to the WCB 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.

[para 99] The Complainant submits that the Public Body failed to secure or protect her personal information when an e-mail requesting a breakdown of her pay was sent to the payroll unit of the Public Body from the e-mail account of an employee's family member. I note that the e-mail also indicated that a response could be sent to the employee through her family member.

[para 100] Section 38 of the Act requires the head of a public body to protect personal information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or destruction. However, the Notice of Inquiry only raised issues under section 33, 34, 35(a), 39 and 40 of the Act. The Complainant raises her concern regarding the security of her personal information under section 38 for the first time in her submissions to this inquiry. Due to the limits of the authority delegated to me, allowing a new issue at the inquiry has the effect of circumventing the process set out in the Act, as the Complainant should first bring the complaint to the Commissioner (Order F2007-015 at paras. 45 and 46). I accordingly conclude that I do not have jurisdiction to address the Complainant's concern regarding the security of her personal information.

V. ORDER

[para 101] I make this Order under section 72 of the Act.

[para 102] 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, with the exception of its collection of some of the information in the medical status examination report of January 28, 2005 for an unauthorized purpose. Under section 72(3)(e) of the Act, I order the Public Body to stop collecting the Complainant's personal information in contravention of Part 2 of the Act.

[para 103] Under section 72(3)(f) of the Act, I order the head of the Public Body to destroy the personal information that was collected in the medical status examination report (also referred to as a return to work assessment), dated January 28, 2005, in contravention of the Act. Specifically, the Complainant's personal information should be destroyed if it is not reasonably relevant to and necessary for the purposes of a return to work plan. Under section 72(4) of the Act, I specify that the Public Body provide me with a copy of the medical status examination report, in which the irrelevant and unnecessary information has been removed.

[para 104] I find that the Public Body did not collect the Complainant's personal information in the note of June 24, 2003 (regarding a telephone conversation between the Complainant and her supervisor) in accordance with section 34(2) of the Act. I order the Public Body, under section 72(3)(a), to comply – at some point in its collection process – with its duty to inform the Complainant of the purpose for which her information is collected, the specific legal authority for the collection, and the contact information of an officer or employee of the Public Body who can answer questions about the collection.

[para 105] 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 the use, by the Safety and Claims Unit, of some of the information in the note of June 24, 2003, and the use by the Public Body of 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 using the Complainant's personal information in contravention of Part 2 of the Act.

[para 106] 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 the Safety and Claims Unit some of the information in the note of June 24, 2003, and disclosing to the WCB some of the information in the note of June 24, 2003 and psychological information orally on December 13, 2001. 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 107] I find that, in most instances raised by the Complainant, the Public Body did not have a duty to make every reasonable effort to ensure that her personal information was accurate and complete, as provided by section 35(a) of the Act. It did have a duty under section 35(a) with respect to the personal information contained in the note of June 24, 2003 and it fulfilled its duty.

[para 108] 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 the Order.

Wade Riordan Raaflaub
Adjudicator