

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2012-05

February 10, 2012

WORKERS' COMPENSATION BOARD

Case File Number F5474

Office URL: www.oipc.ab.ca

Summary: An individual made a claim to the Workers' Compensation Board (the "Public Body") for her deceased husband's pension benefits, on the basis of her position that she was a dependent spouse under the *Workers' Compensation Act* (the "WCA").

The Public Body conducted an investigation into the Complainant's claim, and determined that the Complainant was not a "dependant" as defined in the WCA and was therefore not entitled to the deceased husband's pension. The Public Body case manager sent a letter to the Complainant explaining the decision and reasons.

The Complainant made a complaint to this office, stating that the Public Body collected, used and disclosed her personal information in contravention of Part 2 of the *Freedom of Information and Protection of Privacy Act* (FOIP Act). Specifically, she complained that the Public Body collected and used more personal information than was necessary to make its decision, that the Public Body inappropriately disclosed the Complainant's personal information to her representative and the Appeals Commission, and that the Public Body had not made reasonable efforts to ensure the information was correct when it made its decision with respect to the Complainant's status as a dependent spouse.

The Public Body argued that it collected the Complainant's personal information for the purpose of investigating her claim under the WCA, but that the information at issue was not material to the determination and was therefore not used by the Public Body.

The Adjudicator agreed that the Public Body had authority to collect the Complainant's personal information for the purposes of investigating the Complainant's claim under the WCA, including the authority to collect the personal information indirectly.

The Adjudicator found that since the information at issue was referred to by a case manager in her decision letter to the Complainant, the Public Body did use the Complainant's personal information. As the information related to the determination, and the final determination and reasons are part of investigating a claim under the WCA, the information was used for the purpose for which it was collected.

The Adjudicator found that the Public Body had the Complainant's consent to disclose her information to her representative, and that the WCA required the Public Body to disclose the information to the Appeals Commission.

The Adjudicator also found that the Public Body did not fail in its duty to make every reasonable effort to ensure that the information used to make a determination as to the Complainant's dependent status was accurate and complete.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 33, 34, 35, 39, 40, 65, 72, *Public Inquiries Act*, R.S.A. 2000, c. P-39, s. 4, *Workers' Compensation Act*, R.S.A. 2000, c. W-15, ss. 1, 13, 17, 18, 20, 36, 44, 70.

Authorities Cited: AB: Orders F2001-004, F2009-041.

I. BACKGROUND

[para 1] An individual made a complaint that the Workers' Compensation Board (the "Public Body") collected, used and disclosed her personal information in contravention of Part 2 of the *Freedom of Information and Protection of Privacy Act* ("FOIP Act").

[para 2] The Complainant's husband had been receiving benefits from the Public Body after a serious workplace accident in 1997. The Complainant had been caring for her husband for nine years after his accident, after which they sold their house and moved to separate residences; they did not divorce or legally separate. Three years later, the husband passed away, and the Complainant claimed that she was a dependent spouse under the *Workers' Compensation Act* (the "WCA"), a status that would entitle her to receive her deceased husband's pension.

[para 3] The Public Body conducted an investigation into the Complainant's claim, and determined that the Complainant was not a "dependant" as defined in the WCA and was therefore not entitled to the deceased husband's pension. The Public Body case manager sent a letter to the Complainant explaining the decision and reasons. The Complainant states that the Public Body collected and used more personal information than was necessary to make its decision and that some of the information should have been collected directly from the Complainant, rather than from another source.

[para 4] The Complainant also complained that the Public Body inappropriately disclosed the Complainant's personal information to her representative and the Appeals Commission, and that it did not make reasonable efforts to ensure the information was correct when it made its decision with respect to the Complainant's status as a dependent spouse.

[para 5] The Complainant acted through a representative in making her WCB claim; this same representative is also acting for the Complainant in this inquiry. For brevity, unless otherwise noted, I will refer only to the Complainant.

II. INFORMATION AT ISSUE

[para 6] The information at issue is the information collected and used by the Public Body when investigating the Complainant's claim that she was a dependent spouse under the WCA; specifically, the Complainant objects to the collection, use and disclosure of statements about an alleged extra-marital relationship, and about her alleged insobriety.

III. ISSUES

[para 7] The Notice of Inquiry sent April 29, 2011 lists the issues as follows:

- 1. Did the Public Body collect the Complainant's personal information in contravention of Part 2 of the Act?**
- 2. Did the Public Body use the Complainant's personal information in contravention of Part 2 of the Act?**
- 3. Did the Public Body disclose the Complainant's personal information in contravention of Part 2 of the Act?**
- 4. Did the Public Body make every reasonable effort to ensure that the Complainant's personal information was accurate and complete, as required by section 35(a) of the Act?**

IV. DISCUSSION OF ISSUES

[para 8] The personal information at issue, information about the Complainant's alleged insobriety and an alleged extra-marital relationship, was collected from a third party. This information was given to the Public Body by a personal care attendant ("PCA") of the Complainant's husband, in a letter to a claims investigator working on the file.

[para 9] According to the letter, the information was told to the PCA by the husband. The FOIP Act defines personal information as follows:

1) *In this Act,*

...

- n) *“personal information” means recorded information about an identifiable individual, including*
 - i) *the individual’s name, home or business address or home or business telephone number,*
 - ii) *the individual’s race, national or ethnic origin, colour or religious or political beliefs or associations,*
 - iii) *the individual’s age, sex, marital status or family status,*
 - iv) *an identifying number, symbol or other particular assigned to the individual,*
 - v) *the individual’s fingerprints, other biometric information, blood type, genetic information or inheritable characteristics,*
 - vi) *information about the individual’s health and health care history, including information about a physical or mental disability,*
 - vii) *information about the individual’s educational, financial, employment or criminal history, including criminal records where a pardon has been given,*
 - viii) *anyone else’s opinions about the individual, and*
 - ix) *the individual’s personal views or opinions, except if they are about someone else;*

[para 10] The above is not an exhaustive list. I find that information about the Complainant’s relationships is her personal information, akin to information such as marital status. Information about the Complainant’s alleged drinking habits is also her personal information. Regardless of the veracity of this information, it might be characterized as the husband’s (or his PCA’s) opinion about the Complainant, which is her personal information.

1. Did the Public Body collect the Complainant’s personal information in contravention of Part 2 of the Act?

[para 11] A public body may collect personal information only as authorized under section 33 of the Act:

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 12] Collection from a source other than the individual the personal information is about is authorized in the circumstances set out in section 34(1). The following are the relevant sections:

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 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 or receiving a benefit, product or service from the Government of Alberta or a public body and is collected for that purpose...*

[para 13] The Public Body was determining whether the Complainant was eligible for spousal benefits under section 70(1) of the WCA, which states:

70(1) If a worker dies as a result of an accident and leaves a dependent spouse or dependent adult interdependent partner, a pension is payable to the dependent spouse or dependent adult interdependent partner in an amount equal to the pension the worker would have received had the worker lived and been permanently totally disabled.

[para 14] Section 1(1)(h) of the WCA defines “dependant” as:

1(1)(h) “dependant” means a member of the family of a worker who was wholly or partially dependent on the worker’s earnings at the time of the worker’s death or who, but for the death or disability due to the accident, would have been so dependent, but a person is not a partial dependant of a worker unless the person was partially dependent on contributions from the worker for the provision of the ordinary necessities of life;

[para 15] The Public Body states that the Complainant did not initially provide sufficient evidence to support her claim that she is a dependent spouse of the deceased, so the case manager requested further information from her. The Public Body included in its submission a copy of a letter sent in February 2010 from the Public Body to the Complainant, requesting further information to support her claim. The case manager

requested information showing that the husband contributed to the Complainant's financial support, such as a court order, copies of bank statements confirming regular support payments, copies of cheques or confirmations of payments received. It appears that no further information was received by the Public Body, since it sent another letter dated May 13, 2010 to the Complainant, referring to the February letter and again requesting information. A third letter sent by the Public Body to the Complainant on May 31, 2010 indicates that the Complainant had responded to the Public Body, informing them that she intended to appeal the Public Body's decision that she did not fall within the definition of "dependant", and that the FOIP Act did not require her to give the Public Body details of her personal finances (presumably as support for her claim). The Public Body responded by explaining that the determination as to the Complainant's dependent status had not yet been made; what further information it required to make the determination; and why.

[para 16] In June 2010, the case manager informed the Complainant by letter that it had assigned the Complainant's claim to its Claims Investigation Unit, in order to "gather pertinent information on the relationship and financial details that will allow [the case manager] to make a decision on this matter." It appears that Public Body's process is that where a claims investigator is assigned to a claim, he or she reports the findings to the responsible case manager. In this case, the claims investigator scheduled a meeting with the Complainant and her representative for June 2010. This meeting was later cancelled by the Complainant via a letter dated June 18, 2010 (provided in the Public Body's submission); the Complainant stated in her letter that she believed that the Public Body had sufficient information to settle the claim.

[para 17] The Public Body states that it was necessary for the claims investigator to speak to several individuals in order to determine whether the Complainant was a "dependant" under the WCA. One individual contacted was the husband's PCA. The PCA apparently spoke to the claims investigator, and also subsequently sent a follow-up written statement. The claims investigator severed out the name of a third party from the PCA's letter, then sent it on to the case manager. The letter was placed in the Complainant's file. It is the collection of this information by the claims investigator from the PCA to which the Complainant has objected, in her submissions.

[para 18] In her letter, the PCA conveyed her understanding of the husband's relationship with the Complainant, including that he was not providing regular financial support to the Complainant. She also divulged comments apparently made to her by the husband regarding his belief that the Complainant had been in another relationship, as well as an anecdote told to her by the husband about the Complainant's having visited the husband while intoxicated.

[para 19] On July 15, 2010, the case manager informed the Complainant that her claim had been denied as she had been found not to be the husband's "dependant" for the purpose of the WCA. The decision letter included comments taken verbatim from the PCA's letter to the Public Body, including what the husband apparently told her about the

Complainant's intoxicated visit and his belief that the Complainant had an extra-marital relationship.

[para 20] The Complainant responded to the Public Body disagreeing with the finding and objecting to the actions of the Public Body employees involved. A manager with the Public Body reviewed the file and found that, although the case manager had referred to irrelevant information in her decision letter, the decision was reasonable based on the information the Public Body had. The manager informed the Complainant of this in a letter dated July 28, 2010. She also informed the Complainant of steps that had been taken to have the irrelevant information in the PCA's letter removed (i.e. redacted); the redacted information included the references to the Complainant's alleged intoxication and the Complainant's alleged extra-marital relationship. A copy of the redacted letter was provided by the Public Body in its submission.

[para 21] The Complainant objected to the redaction of the letter, as she felt that this information had been relied on by the case manager in coming to her determination regarding the Complainant's claim; she wished the information to remain on her file, presumably for the purposes of her intended appeal. A different manager handled this request from the Complainant and replaced the redacted letter on the Complainant's file with the original letter that had been supplied to the case manager by the claims investigator.

[para 22] With respect to the Public Body's authority to collect the Complainant's personal information for the purpose of determining her claim, the Public Body points to sections 17(5), 18(2) and 36 of the WCA:

17(5) The Board has the same powers as the Court of Queen's Bench for compelling the attendance of witnesses and of examining them under oath and compelling the production and inspection of books, papers, documents and things.

18(2) The 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.

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

Section 20 is also relevant:

20 For the purposes of conducting an investigation under this Act, the Board or other person conducting the investigation has all the powers, privileges and immunities of a commissioner appointed under the Public Inquiries Act.

[para 23] The *Public Inquiries Act* states:

4 The commissioner or commissioners have the power of summoning any persons as witnesses and of requiring them to give evidence on oath, orally or in writing, and to produce any documents, papers and things that the commissioner or commissioners

consider to be required for the full investigation of the matters into which the commissioner or commissioners are appointed to inquire.

[para 24] The Public Body argues that the claims investigator collected information related to the Complainant's relationships and alleged insobriety to assist the case manager in determining whether the Complainant was a "dependant" under the WCA. The PCA sent the letter to the claims investigator, who severed the name of a third party, then forwarded the letter to the case manager. The case manager was responsible for making the decision with respect to the claim. The Public Body states that the case manager is also responsible for determining what information is relevant to the determination of the claim.

[para 25] Determining an individual's entitlement to compensation under the WCA is clearly a matter concerning the administration of that Act; an investigation undertaken to make that determination is authorized under section 18(2) of the WCA. The ability to compel any documents the Public Body requires in conducting an investigation (section 20 of the WCA and the *Public Inquiries Act*) and the authority to request any information relative to compensation that the Public Body considers necessary from an individual who is entitled to that compensation (section 36 of the WCA) permits the Public Body to collect the Complainant's personal information for the purpose of determining whether she was entitled to compensation as a "dependant" under the WCA. The collection was therefore authorized within the terms of section 33(a) of the FOIP Act, which permits collection that is expressly authorized by an enactment.

[para 26] As the collection is to determine entitlement to compensation, section 34(1)(k) of the FOIP Act authorizes the indirect collection of personal information for that purpose. The Public Body cited section 34(1)(k)(ii) even though it appears that the Complainant was not receiving spousal benefits from the WCA at the time of her claim. I will assume the Public Body made an error and intended to cite section 34(1)(k)(i), which encompasses the application for a benefit.

[para 27] The Public Body was authorized to collect personal information as required to properly investigate and make a determination with respect to the Complainant's claim; the personal information collected must therefore be related to the determination of the claim. The Public Body cited an order from this office, in which former Commissioner Work stated,

In Order 98-002, I said that the Public Body's legislative authority to collect personal information under section 32(a) [now 33(c)] of the *FOIP Act* is contained in sections 29 [now section 34] and 31 [now section 36] of the *Workers' Compensation Act*. Furthermore, in Order 98-002, I said that section 31 of the *Workers' Compensation Act* only gives the Public Body the authority to collect information if the information relates to both the "disability" and the "compensation" of the disability. In that Order, I also said that the use of the phrase "that it considers necessary" in section 31 of the *Workers' Compensation Act* implies that the Public Body has the discretion to decide what information is necessary relative to the disability and compensation. As such, I said that I would give the Public Body considerable latitude in deciding whether the

collection of personal information is necessary relative to the disability and compensation.

[Order F2001-004, at para. 18]

[para 28] The Complainant argues that the information at issue was not necessary to determine whether the Complainant was a “dependant” under the WCA and therefore the Public Body was not authorized to collect it.

[para 29] The manager who responded to the Complainant’s objection to the case manager’s decision letter states in her response to the Complainant that the decision letter from the case manager references “situations and other alleged relationships that are not material to the issue or decision. I have discussed this with [the case manager] and can assure you future correspondence and decisions will contain only those details relevant to the issue under consideration.” I have no direct evidence or statement from the case manager regarding her opinion as to the relevance of the information at issue at the time she wrote the decision letter.

[para 30] I note that the Public Body does not need to rely on all information collected when making a determination under the WCA, in order for that collection of information to be authorized under the FOIP Act. Often at least some of the information collected will not ultimately be relied on to make the determination; part of a case manager’s job is to sort through the information that they have sought out or that is presented to them, to decide what is relevant. It would not be practical to thwart the work of investigators carried out in good faith, by the prospect that after the fact, what they collect will be judged, with hindsight, to be irrelevant as evidence and the collection to have been unauthorized. In my view, the investigator may collect any information that could reasonably be said to be related to the matter under investigation and potentially relevant. It need not ultimately be proven to be relevant in fact.

[para 31] In her letter to the Complainant, the manager also informed the Complainant that because the Complainant and the husband were not cohabiting at the time the husband passed away, the case manager had to consider information about their relationship and individual financial situation in order to determine if the Complainant was a “dependant” under the WCA.

[para 32] The Complainant provided me with a copy of the decision from the Appeals Commission, which determined that the Complainant was a “dependant” under the WCA. The Complainant argues that the “Appeals Commission did not use the same information in the decision making.” I assume that the Complainant is arguing that the fact that the Appeals Commission did not refer to either the Complainant’s alleged extra-marital relationship or her alleged intoxication, is support for finding that the information at issue is not relevant to the decision regarding her dependent status under the WCA. I note that the Appeals Commission did refer to the state of the Complainant’s relationship with the husband, and their financial arrangements, although the specific information at issue was not referenced.

[para 33] I accept the Public Body’s argument that a factor in determining whether the Complainant was a “dependant” under the WCA was the Complainant’s financial situation as it related to the husband, and therefore that the case manager required information about the Complainant’s financial status and relationship with the husband. The Complainant argued that the Public Body should have sought information directly from her rather than from another source, but the evidence provided by the Public Body indicates that the case manager made several attempts to collect information directly from the Complainant before resorting to other sources. In any event, I have found that the indirect collection was authorized under the Act.

[para 34] While the claims investigator initiated contact with the PCA, and spoke to the PCA, she did not request the particular information at issue; rather it was provided, unsolicited, in the letter from the husband’s PCA. This letter included information (whether factually accurate or not) that was related to the Complainant’s financial dependence on the husband, which was relevant to the Complainant’s claim that she is the husband’s dependent. Whether or not all the information at issue in the letter was relevant, it was reasonable for the claims investigator to collect the letter and provide it to the case manager, along with other information collected, so that the case manager could determine what information to rely on in making her determination. Any irrelevant information intertwined with the relevant information did not make the collection of the letter unauthorized.

2. Did the Public Body use the Complainant’s personal information in contravention of Part 2 of the Act?

[para 35] A public body may use personal information in the following manner:

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,*
- (b) if the individual the information is about has identified the information and consented, in the prescribed manner, to the use, or*
- (c) for a purpose for which that information may be disclosed to that public body under section 40, 42 or 43.*

...

(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.

[para 36] The Public Body states that

although the information regarding [the Complainant’s] intoxication and details of her other relationships, does appear in the July 15, 2010, Entitlement Decision letter, it is not material to the decision made to not accept her as a dependent spouse under the husband’s claim. Moreover, the reason for its continued existence on the claim file is that [the Complainant] expressly requested that it remain thereon. In any event, it is submitted that all information used by the WCB was necessary to properly

adjudicate [the Complainant's] status as a "dependant" pursuant to the provisions of the WCA...

I understand the Public Body's argument to be that the information at issue was not used for the purposes of section 39(1) because it was not relied upon to make the determination about the Complainant's dependent status, and also that information that *was* in fact used (which is not the information at issue), was necessary to make the determination.

[para 37] In her submission, the Complainant noted that the Public Body continues to refer to this information (I assume she means in the Appeals proceeding) and therefore the Public Body cannot argue that it has not been used. The Public Body states that it kept the information at issue in the Complainant's file at her request. After receiving the Complainant's objection to the decision letter, the Public Body had severed the information from the PCA's letter and placed this severed version on the Complainant's file in place of the original version. The Complainant believed that the Public Body had relied on this information in its determination and for this reason she requested that it remain on her file. The Public Body argues that "the WCB does not prohibit workers from placing information about themselves that they feel is relevant to compensation issues on their WCB claim files, as the WCB cannot second guess what arguments an injured worker or dependent may wish to advance. The WCB cannot prohibit nor dictate to someone what argument they may or may not advance and the evidence they wish to rely upon." I assume that the Public Body is arguing that the continued presence of the information on the Complainant's file is due to her request and not because the Public Body used the information to determine her dependent status. I do not find this argument to be helpful in this case, since the use that is being complained of occurred when the decision letter was created (or when the case manager made the decision that was reflected in the decision letter).

[para 38] The decision letter sets out, in bullet form, the information obtained in the course of the claim investigation, including the information at issue. The Public Body takes the position that the information at issue "did not have any bearing on the final decision made by the Case Manager." However, there is no indication that this point of view is based on information to this effect from the case manager herself; rather, it seems to be based on the opinion of the manager, and of the counsel who authored the Public Body's submissions, that the information is irrelevant to the decision and should not have been considered. In my view, the fact that this opinion was formed after the fact cannot be determinative of whether the case manager herself used the information for making her decision.

[para 39] Possibly (given the absence of any evidence to the contrary) some or all of the information listed in the decision letter influenced the case manager's decision to some degree. The fact she included the information in the decision letter, and that she did not sever it in accordance with the Public Body's policies that require the removal of

irrelevant information from client files¹, suggests she regarded it as being of some relevance. At a minimum, she used it to set out the background facts in writing her decision. Even if she gave it little or no weight in reaching her decision, I find that the case manager used the information when she included it in the course of writing her decision.

[para 40] Because the Public Body took the position that the information was not used by the case manager in reaching her decision, it did not address whether the case manager had authority to use it. I accepted the Public Body's argument that the information at issue was collected for the purpose of determining the Complainant's "dependant" status under the WCA. In my view, a logical extension of making that determination is informing the Complainant of the decision; indeed, section 44 of the WCA requires this:

44 On the making of a determination as to the entitlement of a worker or the worker's dependant to compensation under this Act, the employer and the worker or, in the case of the worker's death, the worker's dependant, shall, as soon as practicable, be advised in writing of the particulars of the determination, and shall, on request, be provided with a summary of the reasons, including medical reasons, for the determination.

[para 41] Under the FOIP Act, a public body may use personal information for the purpose for which it was collected (section 39(1)(a)). Although the Public Body argues that it did not use the particular information at issue, I have found that it *was* used, either in making the determination about the Complainant's status, or at least to thoroughly document what evidence had been reviewed. Both of these activities are logically related to the purpose for which the information was collected; in other words, the information was collected as part of the investigation into the Complainant's claim under the WCA, and was used by the case manager in her resulting determination and in preparing the related letter. The case manager would equally have been "using" the information at issue had she explained in her letter why she was rejecting the information as a basis for making her decision (had that in fact been the case), and in my view she would be authorized to do so.

[para 42] If this office were to make decisions as to whether the use of information was authorized based on whether or not it agreed that the particular information was a relevant item of evidence in the Public Body's process, it would be treading on the jurisdiction and work of the Public Body and the WCA. In my view, certainly so long as these bodies are gathering and evaluating evidence in good faith and the belief that it may

¹ The Public Body provided me with copies of its policies with respect to the handling of personal information, which require the severing of any irrelevant information from a client's file. The claims investigator seems to have been following this severing policy when she severed the name of a third party, who was obviously not relevant to the determination of the claim, from the PCA's letter before giving it to the case manager. The Public Body did not explain why the case manager, if she believed that the information at issue was not relevant, did not immediately sever the information from the PCA's letter in the Complainant's file. As noted above, the Public Body later decided to sever the information, but only after it had already been used by the case manager in her determination letter.

be or is relevant, it is not my role to second-guess their performance of these duties. Given, as I have found, that the collection of the information was authorized, whether the case manager accepted or rejected it as relevant, or whether she was right to do whichever of these things she did, does not bear on the my determination. As long as she was using the information in the good faith performance of her duties, she was using it for the purposes for which it was collected, and was authorized to do so by section 39(1)(a). If her conclusions were wrong in law, the appeal process was the means by which this could be rectified. It is not the role of this office to provide a mechanism for a collateral attack on the Public Body's processes and the case manager's decision.

[para 43] The same points apply to whether the terms of section 39(4) of the FOIP Act were met. This provision requires a public body to use personal information only to the extent necessary to fulfill its purpose in a reasonable manner. The case manager considered the information that had been presented to her by the claims investigator to enable her to make her determination and issue her decision, as she was entitled to do. There is nothing to suggest that she used the information for any extraneous or bad-faith purpose. She did not need to have been correct as a matter of law as to the significance to be accorded the information in order for her performance of this function to have been done in a reasonable manner.

[para 44] I find that the Public Body's use of the information was authorized under sections 39(1)(a) and 39(4).

3. Did the Public Body disclose the Complainant's personal information in contravention of Part 2 of the Act?

[para 45] A public body may disclose personal information in accordance with section 40 of the Act. The relevant provisions are as follows:

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

...

(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,

...

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

...

(h) to an officer or employee of the public body or to a member of the Executive Council, if the information is necessary for the performance of the duties of the officer, employee or member,

...

(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.*

[para 46] With respect to the disclosure of the Complainant's personal information, the Complainant states that:

[t]he disclosure violation was directly related to the dependent spouse, the injured worker information to the dependent spouse, the AC and the representative. Disclosure is only part of the F.O.I.P issue and the impact on the dependent spouse is the second part of F.O.I.P. that was not considered by the WCB.

As I understand it, the Complainant is objecting to the disclosure of the information at issue as well as the husband's personal information to herself, the Appeals Commission and her own representative. She also appears to argue that the Public Body has not properly considered the negative impact of the alleged unauthorized disclosure on the Complainant.

[para 47] With respect to the impact on the Complainant of any disclosure, a disclosure of personal information is either specifically authorized under the Act or is not; the possible negative impact of the disclosure is not a factor in determining whether the disclosure was authorized, although it may make an unauthorized disclosure more or less egregious.

[para 48] With respect to the Complainant's objection of the disclosure of the husband's personal information to her, an individual may only make a complaint with respect to the collection, use and disclosure of his or her own personal information under the Act:

65(3) A person who believes that the person's own personal information has been collected, used or disclosed in contravention of Part 2 may ask the Commissioner to review that matter.

As such, I will not consider the disclosure of the personal information of the husband.

[para 49] The Complainant also complains about the disclosure of personal information to her representative, and to the Appeals Commission. The Public Body provided a copy of the Worker's Information Release Form signed in May 2010 by the Complainant, which clearly authorizes the Public Body to disclose information to the representative to help the representative review the claim and/or conduct an appeal. The Public Body disclosed the Complainant's personal information to the representative in the representative's capacity as an *agent* for the Complainant. The Complainant cannot, on one hand, authorize the representative to act in her place and request the Public Body to communicate through the representative, and on the other hand allege an unauthorized

disclosure when the Public Body discloses personal information to the representative that it would have otherwise provided directly to the Complainant.

[para 50] In addition, the authorization form signed by the Complainant meets the requirement for consent, under section 40(1)(d) of the FOIP Act, for the Public Body to disclose the Complainant's personal information to the representative to review the claim or prepare an appeal; this consent clearly applies to the Public Body's disclosure of its determination of the claim and reasons for that determination.

[para 51] Finally, with respect to the Appeals Commission, the Public Body states that the Appeals Commission requested the Complainant's claim file from the Public Body when the Complainant filed an appeal of the Public Body's decision. In response, the Public Body provided the file, including the information at issue, which remained on the file in part because the Complainant requested that it remain. Section 13.2(5) of the WCA requires the Public Body to provide the Appeals Commission with all the information in the claim file relating to the decision. The information at issue related to the decision (indeed was described in the decision letter), regardless of whether the Public Body should have relied on that information in making its determination:

13.2(5) Where a decision or determination is appealed, the Board shall, on request, forward to the Appeals Commission

(a) the records and information in its possession relating to the decision or determination, and

(b) the written reasons for the decision or determination.

[para 52] Therefore the disclosure of the Complainant's personal information to the Appeals Commission was authorized under section 40(1)(f) of the FOIP Act.

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

Section 35(a) of the FOIP Act states:

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 53] Two conditions must be met before section 35(a) applies: there must be personal information, and the Public Body must intend to use (or must have used) the information to make a decision that directly affects the individual the information is about (Order 2001-004, at para. 30).

[para 54] The Public Body argues that because the information at issue was not *used* by the Public Body in making its determination, but only referred to in the determination letter, section 35(a) does not apply. It cites, as support, a previous Order from this office,

in which the Adjudicator states that “section 35, does not refer to personal information appearing in decisions, but to information used to make decisions” (Order F2009-041, at para. 109).

[para 55] I have already rejected the Public Body’s argument that the information at issue was not used by the Public Body for the purposes of section 39 of the FOIP Act; however, it does not necessarily follow that the information was used by the Public Body in making its decision about the Complainant. As noted above, it is not clear to me, based on the case manager’s decision letter, whether she used the information to inform her decision, or merely included the information to document what she had reviewed.

[para 56] Even if the case manager used the information at issue to make her decision regarding the Complainant, the case manager presented the information at issue in her decision letter as information that was communicated to the PCA by the husband. In other words, it is not evident from the decision letter that the case manager accepted as fact that the information was true. Rather, it seems just as likely that the information was included as a representation of the husband’s opinion of the Complainant. In this case, as the letter came directly from the PCA and the husband is deceased, the Public Body could not have taken further steps to verify whether the information is an accurate representation of what the husband actually said to his PCA.

[para 57] As already noted, I am not convinced that the Public Body used the information at issue to make a decision about the Complainant. However, even if the information was used to make a decision about the Complainant, in my view the information is represented not as fact but as opinions or statements of an individual who is now deceased. While this may call into question the usefulness and reliability of such information, it also means that the Public Body had little, if any, means of verifying the information. Therefore the Public Body did not fail to make every reasonable effort to ensure that the disclosed information was accurate and complete under section 35(a) of the Act.

V. ORDER

[para 58] I make this Order under section 72 of the Act.

[para 59] I find that the Public Body was authorized to collect the Complainant’s personal information under Part 2 of the Act.

[para 60] I find that the Public Body was authorized to use the Complainant’s personal information under Part 2 of the Act.

[para 61] I find that the Public Body was authorized to disclose the Complainant’s personal information under Part 2 of the Act.

[para 62] I find that the Public Body did not fail to make every reasonable effort to ensure that the disclosed information was accurate and complete under section 35(a) of the Act.

Amanda Swanek
Adjudicator