ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2013-11

April 12, 2013

WORKERS' COMPENSATION BOARD

Case File Number F5710

Office URL: www.oipc.ab.ca

Summary: The Complainant made a complaint that the Workers' Compensation Board (the Public Body) had disclosed his personal information to a workers' compensation representative who was not his representative. The disclosure occurred when the Public Body referred his request that it reopen his claim file to the Appeals Commission for Alberta Workers' Compensation (the Appeals Commission) and copied the representative on this correspondence in error. The Public Body also sent a letter addressed to the representative in which it confirmed that the request had been sent to the Appeals Commission. The Complainant also complained that the Public Body's decision to send his request to the Appeals Commission was in error. The Complainant also requested review of the Public Body's response to an access request he had made.

The Adjudicator found that the Public Body's response to the Complainant's access request met the Public Body's duty to assist as required by section 10 (duty to assist an applicant) of the *Freedom of Information and Protection of Privacy Act* (the FOIP Act).

The Adjudicator found that the Public Body had not contravened section 35 of the FOIP Act (accuracy and retention) when it referred the Complainant's request and his medical opinion to the Appeals Commission.

The Adjudicator found that the Public Body had failed to protect the Complainant's personal information against unauthorized access, disclosure and destruction. She found that the disclosure of the Complainant's personal information to the representative was

the result of failing to confirm whether the representative was authorized to receive the Complainant's personal information.

The Adjudicator noted that the Public Body had sent the Complainant's medical opinion to the Appeals Commission by regular mail, addressed "To Whom it May Concern". She found that the Public Body had not considered whether it had authority to disclose the Complainant's medical opinion to the Appeals Commission, or whether there was anyone at the Appeals Commission who was authorized to receive the Complainant's medical opinion. The evidence established that the Appeals Commission had no record of receiving the medical opinion sent to it by the supervisor. The Adjudicator found that this outcome was likely the result of the manner in which the Public Body had forwarded the medical opinion and the Public Body's failure to specify an authorized addressee.

The Adjudicator ordered the Public Body to advise its employees in writing to review their correspondence and to ensure that all correspondence containing the Complainant's personal information is sent and addressed only to those authorized to receive it.

She also ordered the Public Body to ensure that when the Complainant's personal information is sent to persons authorized to receive it, the method of sending the personal information and the manner in which it is addressed reflects the sensitivity of the personal information.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 10, 35, 38, 40, 41, 72; *Personal Information Protection Act*, S.A. 2003, c. P-6.5 s. 34; *Workers' Compensation Act*, R.S.A. 2000, c. W-15 ss. 13.2, 46, 147; *Health Information Act* R.S.A. 2000, c. H-5, s. 45

Authorities Cited: AB: Order F2006-018, F2006-026, F2009-041, F2011-006, F2007-29, P2012-02, Order F2013-06, Investigation Report H2003-IR-001 & F2003-IR-003
Appeals Commission Decision No: 2012-49, 2012 CanLII 3045 (AB WCAC)

I. BACKGROUND

[para 1] The Complainant made an access request for "case files, notes, letters, electronic transmissions (including phone conversations, emails, faxes) and all references, memos, file jackets" with regard to his claim. The Complainant included the claim number in the request.

[para 2] A data entry clerk inadvertently entered the name of a consulting company as the representative for all workers who had files open with the access to information area. This resulted in the consulting company being listed in the Public Body's database as the authorized representative of the Complainant, even though this company was not authorized to represent the Complainant.

[para 3] In a letter dated November 25, 2010, the Complainant requested that the Public Body reopen his claim. He provided a medical opinion from his physician to support his request.

[para 4] On December 20, 2010, a supervisor decided to forward the medical opinion to the Appeals Commission so that it could take action on the Complainant's request to reopen his claim. She sent a copy of her covering letter, which was addressed to the Appeals Commission, to the Complainant and to the consulting company, because the consulting company now appeared as the Complainant's representative, due to the data entry error referred to above. The supervisor also sent a letter to the Complainant and to the consulting company confirming that she was sending the medical opinion to the Appeals Commission.

[para 5] On March 21, 2011, the Complainant made a complaint to the Commissioner that the Public Body had disclosed his personal information to the consulting company without authority.

[para 6] The Complainant requested that the Commissioner review whether the Public Body had taken reasonable measures to guard against threats such as unauthorized access and disclosure of his personal information. The Complainant also complained that his medical information had been sent to the Appeals Commission in error, and, was, in his view, sent contrary to section 35 of the *Freedom of Information and Protection of Privacy Act* (the FOIP Act).

[para 7] The Complainant requested that the Commissioner review the Public Body's response to his access request on the basis that there were records missing. This issue was combined with the complaints described above.

[para 8] The Commissioner authorized mediation to resolve these matters. However, as mediation was unsuccessful to resolve the disputes, they were scheduled for a written inquiry.

[para 9] Once I reviewed the Complainant's complaints and request for review, and the evidence and submissions of the parties, I asked further questions of the Public Body, regarding the Public Body's decision to forward the Complainant's medical opinion to the Appeals Commission. I also asked questions as to how these records were sent and whether the Public Body knew what had happened to them.

II. ISSUES

ISSUE A: Did the Public Body meet its duty to the Complainant as provided by section 10(1) of the Act (duty to assist applicants) when it responded to the access request?

ISSUE B: Did the Public Body make every reasonable effort to ensure the Complainant's personal information was accurate and complete, as required by section 35(a) of the Act (accuracy and retention)?

ISSUE C: Did the Public Body meet its obligations as required by section 38 of the Act (protection of personal information)?

III. DISCUSSION OF ISSUES

ISSUE A: Did the Public Body meet its duty to the Complainant as provided by section 10(1) of the Act (duty to assist applicants) when it responded to the access request?

[para 10] Section 10 of the FOIP Act sets out a public body's obligations to an applicant when the applicant makes an access request. This provision states, in part:

> *10(1) The head of a public body must make every reasonable effort to assist applicants and to respond to each applicant openly, accurately and completely.*

[para 11] A public body has the onus of establishing that it has made every reasonable effort to assist a requestor, as a public body is in the best position to explain the steps it has taken within the terms of section 10(1). The duty to assist includes conducting a reasonable search for responsive records.

[para 12] The Complainant argues that four records were missing from the Public Body's response to his access request. He has provided these records and numbered them as "33, 34, 35, and 37". Record 33 is a letter he wrote to the Public Body requesting that it reconsider its decision based on new medical evidence. This letter is dated November 25, 2010. Record 34 is a medical opinion dated October 18, 2010. Record 35 is a letter from the Complainant to the Public Body dated December 24, 2010. This letter acknowledges that the Public Body referred his reconsideration request to the Appeals Commission and questions why his personal information was copied to a consultant who was not his representative. Record 37 is a letter from the Complainant dated January 19, 2011 addressed to the Public Body taking issue with its decision to copy correspondence to a consultant and asking questions regarding the extent to which his personal information had been disclosed.

para 13] A Freedom of Information and Protection of Privacy Specialist employed by the Public Body provided an affidavit to document the search she conducted in response to the Applicants' access request. She states:

> On February 3, 2011, I spoke with [the Complainant] regarding his FOIP Request 2011-P-0007, and confirmed that he would like an update from the last FOIP Request that was processed for him. Based on past requests, I determined the time frame of the search to be conducted was March 1, 2007 to present (January 26, 2011).
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> During my telephone conversation with [the Complainant], I explained there are two processes within the WCB for obtaining access to his personal information. I explained that all records

> used to adjudicate his claim are filed on his claim file and are available to him without a FOIP request, from the WCB's Access to Information area. In addition to this a FOIP request can be processed, in which all other areas of the WCB (outside of the claim file) will be requested to search for his personal information. [The Complainant] confirmed he wanted an update of his claim file and an update of his last FOIP request.
>
> I contacted the WCB's Access to Information area to request they provide [the Complainant] with an update to his claim file (copies of new records added to his claim since the last time he requested a copy or update of his claim file). I later confirmed that an update of his claim file was completed and sent to [the Complainant] on February 24, 2011.
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> I followed the WCB FOIP Office's established process for responding to a request from an applicant requesting access to their information held by the WCB. On February 3, 2011, I sent out a FOIP search request for relevant records, by e-mail, to the established FOIP Contacts within each area of the WCB, outside of the claim file. A copy of the email is attached hereto and marked as [Exhibit] "A".
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> As noted in the email I sent out to the FOIP Contacts, the search was to include a search for ANY records including archived records (which are semi-active and may be located off-site). As well, the email reminded each area that a record is recorded information in any form and includes emails, post it notes, diary / phone log entries, handwritten notes, memos and draft documents, and that records can be stored in official files, on computers, in filing cabinets, drawers, working files or day files.
>
> The WCB's FOIP Contact Records Search and Retrieval Guidelines provide guidance to WCB FOIP Contacts on [identifying] locating and retrieving relevant records. These contacts are advised to search active, semi-active and inactive records, electronic records in private and shared directories and all other electronic applications. They are also advised to check with individuals involved with the file.
>
> By February 14, 2011, responses were received from all areas that received the search email. Attached hereto and marked as "[Exhibit] B" is a checklist acknowledging each area's response. In addition, the search completed by the WCB's Access to Information area included the Case Manager, Supervisor and Manager responsible for [the Complainant's] claim.

[para 14] As set out in the foregoing affidavit, the Public Body's Exhibit B documents the areas searched and the number of responsive records retrieved from each location. The Public Body's letter of February 14, 2011 to the Complainant, in which it provides its response to the access request, also documents the records that it located and the areas where they were located. Requestors may obtain records from their claim file by contacting the Access to Information area, or they may obtain other kinds of records from different locations by making an access request under the FOIP Act. The Complainant sought an update to his claim file and made an access request for responsive records.

[para 15] In relation to records 33, 34, and 35, the Public Body argues:

> Documents 33, 34, and 35, specified by [the Complainant] in his Request for Inquiry, were provided to him in the package of records making up his Claim File Update.
>
> Although these records were not provided as part of the FOIP request, they were provided to the Complainant through the established routine process for providing workers with access to their claim file records.

…

> Although [document 37] is dated January 19, 2011, and the search for records in relation to FOIP Request 2011-P-0007 was initiated on February 3, 2011, this document was not located in response to the search for records that was conducted.
>
> Since we confirmed this particular record was with the Supervisor before it was scanned to the claim file, we spoke with the Supervisor to confirm: 1) when she received the January 19, 2011 letter, and 2) whether she recalls the search she conducted in response to the search request for [the Complainant's] FOIP request. Unfortunately, due to the time that has elapsed she cannot recall the date she received the letter. There is no date stamp to document when it was received by WCB. The Supervisor does recall being contacted and asked to search for records related to [the Complainant]; however, she does not recall the specific search she performed in relation to his request. The Supervisor confirmed her typical search process for FOIP requests includes checking her email messages, her desk surface and faxes received. We have attached the FOIP Request Search Reply Form that confirms the Supervisor, […], was contacted, and did not locate any records.

[para 16] The Public Body states that it provided records 33, 34, and 35 to the Complainant in response to his request for an update to his claim file. With regard to record 37, this document apparently was not scanned into Complainant's claim file until after the searches for records were conducted. This record was not discovered when the supervisor searched for records on her desk. It is unclear from the evidence whether the Public Body provided this document to the Complainant once the Complainant brought its omission from the response to the Public Body's attention. However, this record appears in Tab 5 of the Public Body's submissions.

[para 17] In Order F2007-029, former Commissioner Work set out criteria regarding the evidence necessary to establish the adequacy of a search at an inquiry. He said:

> In general, evidence as to the adequacy of a search should cover the following points:
>
> - The specific steps taken by the Public Body to identify and locate records responsive to the Applicant's access request
> - The scope of the search conducted – for example: physical sites, program areas, specific databases, off-site storage areas, etc.
> - The steps taken to identify and locate all possible repositories of records relevant to the access request: keyword searches, records retention and disposition schedules, etc.
> - Who did the search
> - Why the Public Body believes no more responsive records exist than what has been found or produced

[para 18] Having reviewed the evidence of the Public Body regarding the steps it took to locate responsive records, I am satisfied that the Public Body conducted a reasonable and thorough search for responsive records. Even though it apparently did not locate all responsive records initially, it did so subsequently when updating the Applicant's claim information, and provided the outstanding records to the Applicant.

[para 19] I find that the Public Body conducted a reasonable search for responsive records and met its duty to the Complainant under section 10(1) of the FOIP Act.

ISSUE B: Did the Public Body make every reasonable effort to ensure the Complainant's personal information was accurate and complete, as required by section 35(a) of the Act (accuracy and retention)?

[para 20] The Complainant takes issue with document 22. This document is dated December 20, 2010 and was written by a supervisor of the WCB to the Appeals Commission. The supervisor sent a copy of this letter to a consulting company that was not authorized to represent the Complainant. The letter states:

> To Whom it May Concern:
>
> [subject line]
>
> Please find the attached new evidence provided by [the Complainant]. I forward this information to your attention, as you last adjudicated this file in decision 2010-66.
>
> If you do not understand or agree with this decision it is important that you call me…
> I may be able to better explain the reasons behind my decision or you may have additional information that I may not be aware of. If, after our discussion, you would like to request a review of the decision, there is a dispute resolution process that you can start within one year of the decision date. You can access more information about the dispute resolution process on our website at: www.wcb.ab.ca or by calling our Claims Contact Centre at 1-866-922-9221.
>
> Please call me at […] if I can help to further explain the information in this letter.

[para 21] The Complainant's claim number, date of accident, name, and the part of body that is the subject of his claim file, are recorded in the subject line of the letter. The letter also reveals that the Complainant forwarded new evidence to the Public Body. The letter inexplicably suggests that the Appeals Commission may wish to request review of the supervisor's decision if it does not agree with the supervisor's decision.

[para 22] The Complainant argues that this letter offends section 35 of the FOIP Act for the following reasons:

> [The portfolio officer] did not address my concern with regards to the fraudulent document that was falsely prepared and placed in my WCB file (Document #22). While I was not able to find any specific reference to fraudulent documents in the Freedom of Information and Protection of Privacy Act except for Accuracy and Retention(35). I am able to support the fact that this document is indeed a concocted false / fraudulent document, with clear intent to mislead me as per letter from [an appeals analyst of the Appeals Commission] (Document 38).

Document 38, the March 14, 2011 letter of the Appeals Commission's appeals analyst, indicates that the appeals analyst formed the opinion that the Complainant's request for reconsideration should not have been sent to the Appeals Commission, but should have been dealt with by the Public Body.

[para 23] Section 35(a) of the FOIP Act imposes a duty on public bodies to ensure that personal information that will form the basis of a decision directly affecting an individual is accurate and complete. It 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 24] Section 35(a) refers to ensuring the accuracy of *personal information*. However, the Complainant has not pointed to any personal information referred to in this letter that he considers to be inaccurate or incomplete. Rather, his view that the document is "fraudulent" appears based on the response of the appeals analyst of the Appeals Commission who considered the Public Body's decision to forward his new medical evidence to that public body to have been in error. I accept that the letter sent to the Appeals Commission contains inexplicable and confusing content; however, it did not contain inaccurate personal information. Assuming the decision to forward the file to the Appeals Commission was mistaken, section 35 does not require *decisions* to be correct; only that the personal information on which they are based be accurate and complete.

[para 25] As it has not been demonstrated that any of the Complainant's *personal information* in the letter of December 20, 2010 was inaccurate or incomplete, I find that it has not been established that the Public Body failed to meet its duty under section 35 with regard to the Complainant's personal information.

ISSUE C: Did the Public Body meet its obligations as required by section 38 of the Act (protection of personal information)?

[para 26] Section 38 states:

> *38 The head of a public body must protect personal information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or destruction.*

[para 27] In Order P2012-02, the Adjudicator interpreted section 34 of the *Personal Information Protection Act* (PIPA). Section 34 of PIPA is similar to section 38 of the FOIP Act, and states:

> *34 An organization must protect personal information that is in its custody or under its control by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure, copying, modification, disposal or destruction.*

[para 28] The Adjudicator stated:

> To be in compliance with section 34, an organization is required to guard against reasonably foreseeable risks; it must implement deliberate, prudent and functional measures that demonstrate that it considered and mitigated such risks; the nature of the safeguards and measures required to be undertaken will vary according to the sensitivity of the personal information (Order P2006-008 at para. 99).

[para 29] In Order P2012-02, the Adjudicator determined that "sensitivity" refers to the potential consequences to the individual if the individual's personal information is disclosed. For example, whether the individual whom the information is about could suffer harm as a result of the disclosure, or could become the victim of identity theft, are relevant questions when determining whether information is sensitive.

[para 30] Like section 34 of PIPA, section 38 of the FOIP Act imposes a duty on a public body to make reasonable security arrangements to protect personal information. In my view, a public body will have met the duty under section 38 if it demonstrates that deliberate, prudent, and functional measures have been adopted to guard against, or mitigate, a foreseeable risk. The extent to which security measures are necessary will depend on the sensitivity of the information, as discussed above.

[para 31] In this case, the Public Body concedes that the Complainant's name, claim number, and the nature of the injury accepted by the Public Body were disclosed to a consultant due to an employee error. The Public Body explains that the disclosure was the result of the following circumstances:

> On November 26, 2010, an Access to Information Triage Clerk was adding [a consulting company] as a representative on a claim not related to [the Complainant's claim]; however, rather than adding [the consulting company] to that one claim, [the consulting company] was attached to the WCB's Access to Information area at the address level. The error resulted in an alert, indicating that [the consulting company] was an authorized representative, being added to all WCB claims that had Access to Information listed on it as a participant. This error affected many claims, including [the Complainant's]. The Triage Clerk realized the error immediately and inactivated the Alert; however, the inactivated Alert remained visible on the system and on [the Complainant's claim].
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> …
>
> On December 31, 2010, a fax dated December 27, 2010, was received from [the consulting company] by the WCB Customer Service Supervisor. The fax stated that "representation services are not active with our organization for this worker."
>
> …
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> After receiving the fax, the Customer Service Supervisor reviewed the alerts on [the Complainant's] claim file and noted that the alert providing authorization for [the consulting company] to act as a representative had been activated and inactivated on the same day (November 26, 2010) by an Access to Information Triage Clerk. The Supervisor confirmed that two letters dated December 20, 2010, were copied to [the consulting company] based on their role, in the participant list, as [the Complainant's] representative.
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> …
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> Although the alert was inactivated on November 26, 2010, [the consulting company] remained listed as a participant on [the Complainant's] claim file. The Supervisor reviewed the documents on the claim file to determine if authorization had been received, from [the Complainant] to act on his behalf on or around November 26, 2010. No authorization was located. To determine why [the consulting company] had been added to [the Complainant's] claim file, the Supervisor contacted the Access to Information Supervisor at the time the disclosure was made. During her

> discussion with the Supervisor she was advised that the alert was added in error. Based on the information gathered, it was determined that the December 20, 2010 letters had been incorrectly sent to [the consulting company].
>
> To respond to this privacy breach, the Supervisor followed the steps outlined in WCB Business Procedure 20.2C – Breach of Privacy. This procedure provides direction to WCB employees on the actions required to respond to a disclosure of personal information to a third party who is not entitled to receive that information.

[para 32] I understand from the Public Body's evidence that two letters dated December 20, 2010 were written by a supervisor. These letters are described in the background above. The letter to the Appeals Commission is reproduced in part in relation to the discussion of section 35. This letter was copied to a consulting company that was not authorized to receive the Complainant's personal information and to the Complainant. The second letter confirms that the supervisor sent the Complainant's medical opinion to the Appeals Commission. This letter is addressed to the Complainant, and copies the consulting company.

[para 33] The December 20, 2010 letter to the Appeals Commission refers to "attached new evidence," which is a reference to a medical opinion written by the Complainant's physician regarding the Complainant's medical status and history. The Complainant's request for reconsideration by the Public Body was also forwarded to the Appeals Commission. In its letter of January 12, 2011 responding to the Complainant's complaint, the Public Body referred only to the supervisor's letter of December 20, 2010 referring the matter to the Appeals Commission as having been disclosed to the consulting company.

[para 34] The Complainant raises the question of how much of his personal information was disclosed to the consultant. In particular, the Complainant is concerned that the medical opinion from his physician was disclosed to the consultant. This is a reasonable concern given that the letter addressed to the Appeals Commission, which was copied to the consulting company, refers to an attached medical opinion. There is nothing in the letter sent to the Appeals Commission to suggest that the parties who were being copied would not receive the attachment described in the letter.

[para 35] In a letter of December 19, 2012, I asked the Public Body the basis of its stated belief that it did not send the medical opinion to the consultant. The Public Body provided the following explanation of its position that the medical opinion had not been provided to the consultant:

> On April 21, 2011 … a WCB FOIP Specialist, spoke to [the supervisor who forwarded the Complainant's request and medical opinion to the Appeals Commission], to discuss whether or not the attachment had been forwarded to [the consultant] with the December 20, 2010, correspondence. The WCB submits that it is standard letter writing practice to provide attachments only to the original addressee and not to anyone copied on the letter. This practice was confirmed during the April 21, 2011, telephone conversation with [the supervisor], who stated that it is her normal practice to only provide attachments to the addressee and NOT to those copied on the letter. Based on the information provided by [the supervisor] and the commonly established standard letter writing practice, the WCB determined that although the

> two letters were inappropriately disclosed to [the consultant] the attachment referenced in the letter was not.

[para 36] I find that the Public Body's position that it is standard letter writing practice not to provide attachments to those who are copied on correspondence is unsupported by the evidence, and the existence of such a standard has not been established for the inquiry. I find that the statement that it is the standard practice of the supervisor not to provide attachments to those she copies on correspondence and that she did not deviate from this practice in this case, is the more compelling of the Public Body's arguments. I would find the evidence regarding the supervisor's standard practice even more compelling if it had been contained in an affidavit sworn by the supervisor, rather than provided in the form of double hearsay in the Public Body's arguments. However, I am prepared to accept that the supervisor's standard practice is as it is stated to be, given that this finding is supported by the fact that the Complainant was not provided with a copy of the medical opinion, although he was one of the parties who received a copy of the letter sent to the Appeals Commission. I am therefore prepared to accept that the same would hold true for the consulting company that was copied, and that it was not provided with a copy of the medical opinion.

[para 37] Although I find that the medical opinion was likely not provided to the consultant, the information that was provided to her in the two letters was sufficiently sensitive as to require the Public Body to take "deliberate, prudent and functional measures" to protect this information from unauthorized disclosure, as described in Order P2012-02. I make this finding on the basis that the information disclosed by the Public Body includes detailed information about the Complainant's workers' compensation claim number and claim history, and his medical history. An individual has reasonable expectations of privacy and confidentiality in relation to financial and medical information that would be undermined by disclosure to individuals not authorized to have this information. This analysis also holds true for the medical opinion that the Public Body attempted to send to the Appeals Commission. Moreover, information disclosed from any of these documents could serve to invade the privacy of the Complainant, given that it reveals that he has a workers' compensation claim, and the nature of the injury for which the claim was accepted.

[para 38] Although I find that the Public Body did not provide a copy of the medical opinion to the consultant, the Public Body mailed a copy of the medical opinion to the Appeals Commission, which is a branch of the Government of Alberta and independent from the Workers' Compensation Board of Alberta. In addition to considering whether the Public Body met the requirements of section 38 in relation to the correspondence it provided to the consultant, I will consider whether the Public Body met the requirements of this provision when it mailed the medical opinion and the accompanying letter to the Appeals Commission addressed "To Whom it May Concern".

Did the Public Body take all reasonable steps to protect the Complainant's personal information from unauthorized disclosure?

[para 39] In answering this question, I will first consider the disclosure of the personal information to the consultant, and then the disclosure of the Complainant's personal information to the Appeals Commission.

Disclosure to the Consultant

[para 40] The evidence of the Public Body is that two letters were disclosed to a consultant inadvertently on December 20, 2010 as the result of an error interpreting its computer system. The first letter is the letter addressed to the Appeals Commission to which the medical opinion was attached; the second letter is the letter addressed to the Complainant confirming that the medical opinion had been referred to the Appeals Commission. The consultant was provided a copy of both these letters; the Complainant was provided a copy of the letter to the Appeals Commission.

[para 41] When the consulting company brought the error to the Public Body's attention, the Public Body notified the Complainant and was told by the consulting company that the information that had been sent to the consultant in error had been destroyed.

[para 42] The Public Body explains how the consulting company's name became intertwined with the Complainant's claim file:

> An alert is added to a claim file to communicate information, to WCB employees, about medical, security or communication issues that may affect the handling of an individual's claim file.
>
> At the time of the disclosure to [the consultant], the WCB collected and maintained stakeholder contact information in a number of computer based applications and databases built to facilitate its business processes. Claim "participants" (eg. Physicians, clinics, worker and employer representatives, etc.) and their addresses were entered into the e-Co Address Book. Once a participant and their address were listed in the address book they could then be lined to a claim by authorized administrators only.
>
> The Forms & Correspondence function in e-Co assists in creating letters. When creating a letter, e-Co identifies worker and employer representative(s), from the active participants on that specific claim file and automatically highlights them to create a cc to the representative. If, in the judgment of the claim owner, the highlighted party should not receive a cc, they must deselect the highlighted representative. The letter is then populated.
>
> On November 26, 2010, an Access to Information Triage Clerk was adding [the consultant's company] as a representative on a claim not related to [the Complainant]; however, rather than adding [the consultant's company] to that one claim, [the consultant's company] was attached to the WCB's Access to Information" area at the address level. The error resulted in an alert being added to all WCB claims that had Access to Information listed on it as a participant. This error affected many claims, including [the Complainant's]. The Triage Clerk realized the error immediately and inactivated the Alert; however, the inactivated Alert remained visible on the system and on the Complainant's claim.

[para 43] The unauthorized disclosure of the Complainant's personal information to the consulting company arose in part from a system-generated error, described above. However, this error was only one factor contributing to unauthorized disclosure of the

Complainant's health information. Another factor that contributed to the unauthorized disclosure of the Complainant's personal information to the consulting company was the failure of the supervisor to check whether the information regarding the Complainant's representation was accurate.

[para 44] My review of the Complainant's letter of the November 25, 2010 to the Public Body establishes that the Complainant sought to have his claim reopened on the basis of the medical opinion. This letter indicates that the Complainant was acting on his own behalf and there is no reference in this letter to a representative or to his seeking representation. As the Public Body forwarded the medical opinion to the Appeals Commission in response to this correspondence, it is inexplicable why the supervisor copied a representative when the Complainant did not indicate that she should do so in that correspondence. The discrepancy between the Complainant's correspondence and the information on the database regarding representation made it necessary for the supervisor to check the accuracy of the database in order to avoid the outcome of disclosing personal information without authorization. However, she did not do so.

[para 45] It may be that the supervisor did not check the accuracy of the e-Co system entry because she was assumed it was accurate, or because she did not feel she had time to do so, or because she forgot.

[para 46] I accept that the e-Co system is intended to streamline and simplify the creation of correspondence by automatic population of fields, which are then removed by employees if they are unnecessary or incorrect. However, I cannot ignore the fact that by automatically selecting representatives that may be inaccurate, the Public Body's system gives rise to the risk that personal information will be disclosed inappropriately, without authorization, as happened when correspondence regarding a claim file was sent to the consultant. Employees dealing with a high volume of correspondence may fail to notice that a representative field has been selected, and the field may then be populated erroneously. Alternatively, an employee may assume the information selected by the system is accurate, owing to time constraints and the fact that the information has been inputted on the system. That information may be disclosed through human error, is, in this case, entirely foreseeable, and even likely. From my review of the procedures that the Public Body has provided, I find that the Public Body has not created procedures to minimize the risk that personal information will be sent to persons unauthorized to receive it as a consequence of its system.

[para 47] In my view, at a minimum, the Public Body must require employees to review each field of the correspondence they send and to check the accuracy of address and representative fields, prior to mailing out correspondence regarding claim files. Ideally, the Public Body would also move to a system in which employees select the information they intend to use, rather than deselect information in situations when they are unsure of its accuracy or do not intend to use it.

[para 48] I also note that the Public Body sent two letters to the Complainant and the consultant conveying essentially the same information. That the two letters were created

and mailed to communicate that the Complainant's medical information had been forwarded to the Appeals Commission also created a greater risk that personal information could go astray. The Public Body's Business Procedure 20.7 cautions employees not to create unnecessary records. It therefore appears that the Public Body recognizes that creating unnecessary correspondence can expose the correspondence to increased risks of unauthorized access or disclosure; however, it appears that this procedure may not have been followed, or considered to apply, in this case.

[para 49] Creating procedures that require employees to check address and "representative" information prior to sending claim letters, and ensuring that unnecessary correspondence is not created, are reasonable steps to address the problems created by a system that both automatically selects information and enables employees to make global changes to the representative fields that automatically generate information in multiple kinds of future documents.

Disclosure to the Appeals Commission

[para 50] Although the Complainant's complaint turns on the disclosure of his personal information to the consultant, I find that the supervisor's decision to send the Complainant's medical information to the Appeals Commission may also be viewed as exposing his personal information to the risk of unauthorized access and disclosure.

[para 51] The December 20, 2010 letter sent by the supervisor to the Appeals Commission, and to which she attached the medical opinion, was addressed "To Whom it May Concern". It is unknown whether the Appeals Commission received this letter and the medical opinion. The March 14, 2011 letter from the appeals analyst of the Appeals Commission indicates that there was no record of the referring letter and the medical opinion sent by the supervisor as having been received by the Appeals Commission. In response to my question, the Public Body confirms that the referring letter and the medical opinion were sent by regular mail. However, it was only once the Complainant sent a copy of the referring letter and the medical opinion to the Appeals Commission that the Appeals Commission's appeals analyst received and responded to it.

[para 52] There are three possibilities: first, that the letter and medical opinion were not sent to the Appeals Commission, second, that the letter and the medical opinion were sent but not received by the Appeals Commission but by an unintended recipient, and third, that the lack of a defined addressee or open file resulted in the letter and medical opinion being received by the Appeals Commission, but not sent to an employee for action. The evidence of the Public Body eliminates the first possibility.

[para 53] The first question to consider is whether the supervisor had authority to disclose the Complainant's personal information to the Appeals Commission, as she attempted to do. If she lacked authority to disclose the Complainant's personal information under the FOIP Act, but attempted to do so anyway, this would mean that the Public Body had failed to protect the Complainant's personal information from unauthorized disclosure.

[para 54] The second question to consider, given that the supervisor's correspondence and the medical opinion were not received by the Appeals Commission, is whether the Public Body took reasonable measures to ensure that the Complainant's personal information would be received by an authorized recipient, and not be exposed to the risk of unauthorized access, collection, use, disclosure, or destruction, within the terms of section 38.

Did the supervisor have authority under the FOIP Act to disclose the Complainant's personal information to the Appeals Commission recognized by section 40 of the FOIP Act?

[para 55] Section 40 of the FOIP Act sets out the circumstances in which a public body is authorized to disclose personal information. It states, in part:

> *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,*
> >
> > *…*
> >
> > *(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…*

[para 56] While the supervisor's intention may have been to assist the Applicant by forwarding his request to what she believed to be the right adjudicative body to consider his application, there is no indication that the supervisor considered whether she had authority to disclose the Complainant's personal information, which included a medical opinion about him, to the Appeals Commission.

[para 57] In effect, through her correspondence to the Appeals Commission, the supervisor requested that the Appeals Commission make a new decision regarding the Complainant's claim, which, under section 13.2 of the *Workers' Compensation Act*, is an application that only the Complainant, or his authorized representative, or someone who has a direct interest in, and dissatisfaction with, a decision made on his claim, could make.

[para 58] Section13.2 of the *Workers' Compensation Act* (WCA) establishes the circumstances in which a party may appeal a decision to the Appeals Commission and circumstances in which the Appeals Commission may obtain information regarding matters under appeal from the Public Body. This provision states, in part:

13.2(1) A person who has a direct interest in and is dissatisfied with

> *(a) a decision under section 46 made by a review body appointed under section 45,*
> *(b) a decision under section 120 made by a review body appointed under section 119, or*
> *(c) a determination of the Board under section 21(3)*

may, in accordance with this section, the regulations and the Appeals Commission's rules, appeal the decision or determination to the Appeals Commission.

(2) In considering an appeal from a decision under section 46, the Appeals Commission shall consider the records of the claims adjudicator and the review body relating to the claim.

…

(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.*
> *[My emphasis]*

[para 59] The Complainant's letter of November 25, 2010 to the Public Body, in which he asks the Public Body to reopen his claim file, does not authorize the Public Body to send his medical information to the Appeals Commission. His letter is not addressed to the Appeals Commission. Moreover, having reviewed the contents of the Public Body's referral letter, it is not clear to me that the Appeals Commission would have understood that the intent of the supervisor was to refer the Complainant's reconsideration request to it for adjudication, or the reasons for doing so, particularly in the absence of an application addressed to it from the Complainant.

[para 60] The Public Body referred me to its Board Policy 01-08, as authority for sending the Complainant's medical opinion to the Appeals Commission. This policy states:

> When new evidence is submitted to support a request for reconsideration of an issue previously decided by one of the review or appeal bodies (Dispute Resolution and Decision Review Body, Appeals Commission), the matter will be referred to the appropriate body.

[para 61] Policy 1-08 does not state that the *new evidence* will be submitted to the Appeals Commission by the Public Body, only that the matter itself will be referred to the appropriate body. Compliance with Policy 01-08 can be achieved by informing an appellant that the application is properly made to the Appeals Commission.

[para 62] I do not read this provision of the policy as authorizing the Public Body to "transfer" an application to the Appeals Commission, given the language of section 13.2(1) of the *Workers' Compensation Act*. Section 13.2(2) of that Act, cited above, authorizes the Appeals Commission to review the files of a claims adjudicator only once it has received an appeal from a person with a direct interest in, and dissatisfied with, a decision made by the Public Body under section 46 of the WCA. Section 13.2(5) of that Act requires the Public Body to provide information in its files regarding the matter under appeal once the Appeals Commission has requested the information. I am unable to identify a provision of the WCA, or the Public Body's policies, that would authorize disclosing claims information or medical opinions to the Appeals Commission in the absence of an application to that body. In the case before me, no appeal meeting the requirements of section 13.2(1) had been made, such that 13.2(2) would authorize the Appeals Commission to review the records sent by the supervisor.

[para 63] The Public Body also points to section 147(2) of the *WCA* as authorizing it to disclose information about the Complainant's claim to the Appeals Commission. Section 147 of the WCA states:

> *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 64] The Public Body argues:

> Section 147(2) of the [WC Act] requires WCB employees to only disclose information "respecting a worker" for purposes authorized by the Board and only to those "persons directly concerned"…
>
> The authority required by section 147(2) to disclose information, supports WCB Policy associated with the disclosure of personal information. This includes Policy 01-02, Part I, which outlines the need to balance the protection of personal information with the need to provide relevant information to interested parties…
>
> The Appeals Commission is a separate body, but a body that specifically hears and determines WCB appeals. It is entirely consistent with the purpose of collecting information to disclose information to the Appeals Commission. The WCB submits that the Appeals Commission is an interested party as contemplated by section 147(2) of the WC Act; therefore, the disclosure of [the Complainant's] medical information contained in the October 18, 2010 letter from [the Complainant's physician] to the Appeals Commission was authorized under the WC Act and appropriate under the FOIP Act.

[para 65] The Public Body interprets section 147(2) as authorizing disclosure of the personal information of workers to those directly concerned with the information for the purposes of Part 2 of the FOIP Act. This interpretation of section 147(2) of the WCA was rejected in orders F2006-018, F2006-026, F2009-041, and F2011-006. These orders interpret section 147(2) as prohibiting employees of the Public Body from disclosing information obtained in their capacities as employees, unless a provision of the WCB permits the disclosure. The ability to disclose information is also limited to those persons contemplated by those specific provisions, to whom the provision refers as "persons directly concerned"

[para 66] In Order F2006-026, the Director of Adjudication rejected the same argument that has been presented to me, and said:

> In my view, other than the limited types of information already discussed, this provision does not permit disclosure of the information in this case. I believe reliance on this provision by the Public Body is meant to suggest that the disclosure in this case was permitted under the Act on the basis it was done "under authority of the Board". Under this interpretation, any information sharing (to directly concerned persons) done by a WCB staff member as an employee or agent of the Board would be "under the Board's authority" on the basis that such a person made the decision to share it.
>
> I reject such an interpretation of section 147(2). The WCA specifically authorizes the Board to share specific information. The suggested interpretation would make the specific information-sharing provisions in the WCA redundant and meaningless… In my view "under the authority of the Board" means 'under the authority given to the Board by the WCA' - in other words, in accordance with the specific provisions of the WCA and the policies of the WCB that authorize the sharing of specified information in specified circumstances. The purpose of section 147(2) is to make it a contravention of the Act to share information other than that the Board is authorized to share under the WCA...

[para 67] Section 147(2) is a prohibition on the disclosure of information, rather than an empowering provision. The intent of this provision is to ensure that employees of the Public Body do not disclose information obtained in the course of their duties unless specifically authorized to do so under the WCA, and only to persons who are authorized

under the WCA to receive the information. Section 13.2 (5), reproduced above, of the WCA authorizes the Public Body to provide records to the Appeals Commission once a matter has been appealed *and* the Appeals Commission has requested records relating to the matter. Section 13.2(5) would lack purpose if the Public Body has the authority under section 147(2) to provide the records to the Appeals Commission at any time. The better reading of section 147(2) is that it prohibits disclosure to the Appeals Commission unless section 13.2(5) applies.

[para 68] Section 13.2(2) of the WCA requires the Appeals Commission to review the records of a claims adjudicator when considering an appeal. There is no authorization under the Act for the Appeals Commission to review the records of a claims adjudicator in the absence of an appeal. Even if section 147(2) authorized the Public Body to send the personal information of workers to the Appeals Commission at its discretion, in the absence of an appeal under section 13.2(2), there is no corresponding ability under the WCA for the Appeals Commission to collect information from a claims adjudicator's files. As a result, I reject the Public Body's argument that the Appeals Commission was authorized to receive the Complainant's medical opinion as an "interested party".

[para 69] The Public Body relies on Procedure 4.1, point 2, which states, in part:

> **Case Manager / Adjudicator / Case Assistant / Resolution Specialist Review** the claim file to determine if the new information relates to a prior decision. If the information
>
> **Relates to a prior decision**, refer the new information to the body that last dealt with the issue {i.e. Customer Service (CS) Dispute Resolution and Decision Review Body (DRDRB) or Appeals Commission (AC)}. Advise the worker and/or employer that new information has been received and the action taken (i.e. claim forwarded to CS, DRDRB or the AC).
>
> If the file was last dealt with by:
>
> AC-forward the new information to the AC for determination of New Evidence.

[para 70] In Decision No: 2012-49, 2012 CanLII 3045 (AB WCAC), a panel of the Appeals Commission for Alberta Workers' Compensation characterized WCB business procedures in the following way:

> The DRDRB made their decision at least partly based on WCB Business Procedure 40.1E, Medical Services Not Normally Authorized – Addendum. Section 13.2(6)(b) of the Act directs that the Appeals Commission are bound by the board of director's policy. The Act does not specify that we are bound by the WCB business procedures, which we understand to be an internal administrative procedural manual that is not published for public reference.

From the foregoing, I conclude that WCB business procedures, such as Procedure 4.1, point 2 reflect unpublished, internal administrative decisions regarding how workers' compensation legislation and policies will be implemented. The procedures are not binding on the Appeals Commission, although it is likely that there are expectations that they will be followed by employees of the Public Body.

[para 71] Business Procedure 4.1 indicates that the Public Body will forward claims information and medical opinions to the Appeals Commission and inform the worker and the worker's employer that it has done so *after* forwarding it. If a claims adjudicator follows this procedure, the claims adjudicator will likely be disclosing personal information contrary to Part 2 of the FOIP Act, given that the procedure does not require the employee to consider whether a provision of section 40 of the FOIP Act authorizes the disclosure. Certainly, as I conclude below, none of the provisions of section 40 the Public Body has raised in this case, authorize its disclosure of the Complainant's personal information. As discussed above, there is no authority for the Appeals Commission to obtain information from a claims adjudicator, unless the Appeals Commission has first received an appeal under section 13.2(1) and requested the records under section 13.2(5). In my view, Business Procedure 4.1 conflicts with sections 13.2(1), 13.2(5) or 147(2) of the WCA, and disclosures of personal information made under its authority are not authorized by either the WCA or section 40(1)(e) or (f) of the FOIP Act.

[para 72] The Public Body argues that the disclosure of the Complainant's personal information was made for the purpose for which the information was collected or compiled, or for a use consistent with that purpose, within the terms of section 40(1)(c).

[para 73] As cited above, section 40(1)(c) states:

> *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…*

[para 74] The Public Body argues;

> The Appeals Commission is a separate body, but a body that specifically hears and determines WCB appeals. It is entirely consistent with the purpose of collecting information to disclose information to the Appeals Commission. The WCB submits that the Appeals Commission is an interested party as contemplated by section 147(2) of the WC Act; therefore, the disclosure of [the Complainant's] medical information contained in the October 18, 2010 letter from [the Complainant's physician] to the Appeals Commission was authorized under the WC Act and appropriate under the FOIP Act.

[para 75] Section 41 of the FOIP Act clarifies the kinds of disclosures that fall under section 40(1)(c). This provision states:

> *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 76] I agree that the supervisor could be said to have collected or compiled the Complainant's personal information for the purpose of determining whether the Complainant's request to reopen his claim file could or should be granted. I also accept that she forwarded the Complainant's request and his medical opinion to the Appeals Commission so that that body could do so. In that sense, I agree that the requirements of section 41(a) are met. However, I find that the requirements of section 41(b) are not met, given that the WCA does not authorize disclosing personal information in those circumstances, and prohibits doing so under section 147(2). As the requirements of both section 41(a) and (b) must be met in order to meet the requirements of section 40(1)(c), it follows that I find that section 40(1)(c) does not authorize the Public Body's disclosure.

[para 77] For these reasons, in my view, the Public Body was not authorized by Part 2 of the FOIP Act to disclose the Complainant's medical opinion and other personal information to the Appeals Commission. However, as noted above, the purpose of this inquiry is to determine whether the Public Body has met its obligations under section 38, which requires a public body to take reasonable measures to protect personal information from unauthorized access and disclosure. For the reasons above, I find that the Public Body's Business Procedure 4.1, to the extent that it refers to the Appeals Commission, serves to create the risk that personal information will be disclosed without authorization.

Did the Public Body take all reasonable measures to protect the Complainant's personal information from the risk of unauthorized access, collection, use, disclosure or destruction when the supervisor sent his medical opinion to the Appeals Commission?

[para 78] Even if the supervisor had been authorized to disclose the Complainant's medical opinion to the Appeals Commission, the manner in which the referring letter was addressed, is cause for concern. As noted above, the Public Body did not specify an authorized recipient, but sent the Complainant's medical information addressed "To Whom it May Concern".

[para 79] In response to my question as to whether the Public Body permits employees to send medical opinions, or other sensitive personal information to organizations or public bodies without specifying an authorized recipient, the Public Body confirmed that it is. The Public Body states:

> … the WCB has established Policies and Procedures that provide direction to WCB employees on the disclosure of information to external parties. However, none of the Polices or Procedures provide[s] detailed direction regarding how to address correspondence. Although, these procedures do not outline specifically how to address correspondence, WCB employees are expected to maintain high professional standards when creating correspondence. This expectation would include addressing correspondence appropriately The WCB is dedicated to ensuring information is communicated effectively to its clients and disclosed only when authorized by the WC Act and in correspondence to a specific individual; however, in this case, because the Appeals Commission had not been involved in [the Complainant's file] since

> January 2010, she did not address the December 20 2010, letter to a specific individual. To avoid addressing the letter to an incorrect individual she addressed it "To Whom it May Concern" with [the Complainant's] Decision Number in the body of the letter in order for it to be routed to the correct party.

[para 80] From the Public Body's response, I understand that addressing health information and other confidential personal information "To Whom it May Concern" is an accepted practice, in circumstances where the Public Body has not determined whether there is an authorized recipient of personal information at an organization, or who that person may be. Moreover, the Public Body appears to consider that this practice ensures "information will not be addressed to an incorrect individual."

[para 81] A difficulty with the Public Body's argument is that this practice of not specifying an authorized recipient ensures that unauthorized individuals may be required to read health information or confidential personal information in order to redirect it to an authorized individual, if one exists. Assuming that the Appeals Commission received the medical opinion, the supervisor's decision to address the medical opinion "To Whom It May Concern" ensured that at least one person, such as a receptionist, who would not necessarily have any authority review the Complainant's medical opinion, would be required to review it in order to forward it to a person who might be authorized to review it.

[para 82] Past orders and investigation reports of this office hold that ensuring the security of personal information necessitates limiting the number of individuals who have access to the information. This point is made in Investigation Report H2003-IR-001 & F2003-IR-003, and more recently in Order F2013-06. Rather than sending a medical opinion without specifying a recipient, which could result in more individuals than necessary gaining access to the information, a better approach would be to determine, prior to sending the letter, whether there was an individual, or individuals, at the Appeals Commission who would be authorized to review the contents of the supervisor's correspondence and the medical opinion, and to address the correspondence to that individual or individuals.

[para 83] Citing a previous decision number would not ensure that correspondence would reach an authorized person, or a "correct party", given that the existence of a previous decision number would not mean that there was an individual *currently* authorized to receive and review the information within the terms of the WCA or the FOIP Act.

[para 84] As set out in the Appeals Commission's correspondence of March 14, 2011, the Appeals Commission took the position that the case manager had referred the medical opinion to it in error and that there was no one there who was authorized to address the correspondence the supervisor had attempted to send to it. As discussed above, the supervisor did not obtain the Complainant's consent to discuss his application or the medical opinion with the Appeals Commission or to disclose it to that body. As a result, and given that the Complainant had not made an application to the Appeals

Commission, in my view, as discussed above, no one at the Appeals Commission was authorized to receive or review the Complainant's personal information.

[para 85] The medical opinion contains the diagnostic, treatment and care information of the Complainant, which means that it is the health information of the Complainant within the terms of the *Health Information Act* (the HIA). Were the Public Body a custodian under the HIA, section 45 of the HIA would permit it to provide the medical opinion only to an intended recipient who is authorized to receive the information. Section 45 of the HIA states:

> 45 A custodian that discloses health information must make a reasonable effort to ensure that the person to whom the disclosure is made is the person intended and authorized to receive the information.

[para 86] In my view, the foregoing is a common sense precaution to ensure that only authorized persons review health information. While I recognize that section 45 of the HIA does not apply in this case, I do not believe that the FOIP Act requires lesser standards of protection for health information when it is in the custody or control of a public body. Section 38, which requires the head of a public body to take reasonable measures to protect personal information from unauthorized access and disclosure, requires public bodies to take any and all common sense precautions to protect personal information, such as that set out in section 45 of the HIA. Sending personally identifying health information to an authorized recipient, rather than a public body or organization generally, is such a precaution.

[para 87] It is entirely foreseeable that unauthorized persons may gain access to personal information if a public body does not take precautions such as those discussed above to ensure that personal information is reviewed only by persons with authority to do so. It is therefore necessary for the Public Body to take measures to ensure that employees do not address claim and health information to public bodies and organizations without specifying an authorized recipient. However, the Public Body has not developed procedures or policies for sending and addressing correspondence to ensure that personal information, including health information, is delivered only to authorized persons.

[para 88] The Public Body confirmed that no steps have been taken to locate the referral letter and the medical opinion, which the records indicate were forwarded to the Appeals Commission but apparently not received by the Appeals Commission. The possibility exists that these records have been disclosed to unintended recipients. While the Public Body has developed a policy to address privacy breaches, which would appear to be pertinent in the circumstances, it appears that this policy has not yet been followed in relation to the referral letter and the medical opinion.

[para 89] The Public Body argues:

> The [supervisor] advised that she was not aware the December 20, 2010 letter was not received by the Appeals Commission until this issue was raised by the Adjudicator in her December 19, 2012 letter. The December 20, 2010, letter was sent via Canada Post, regular mail, without a bar

> code / tracking number to the Appeals Commission. According to the Canada Post website "individual mail items (including letters or bills)" cannot be traced without a bar code / tracking number. However, on January 24, 2013, [the supervisor] spoke to the Appeals Commission to confirm whether or not the December 20, 2010, letter has been received by them. The Appeals Commission advised they have not received the original letter sent by [the supervisor].

[para 90] I note that the March 14, 2011 letter written by the appeals analyst of the Appeals Commission was both sent and addressed to the supervisor. This letter states that the Appeals Commission did not receive the referring letter and the medical opinion until the Complainant himself provided them. (The Complainant provided the information when he learned that the Appeals Commission had not received his medical information in order for the Appeals Commission to take action regarding it. He was subsequently informed in the Appeals Commission's March 14, 2011 letter that it could not.)

[para 91] The method the Public Body chose for sending the medical opinion is not in keeping with the highly sensitive personal information the medical opinion contains. Given that the Public Body is responsible for guarding against risks such as unauthorized access, disclosure, and destruction, sending a medical opinion by regular mail, or any other means that does not permit the Public Body to track the location of the medical opinion at all times and to confirm whether it has been received by the intended recipient, fails to meet the basic requirements of section 38. The Public Body has a duty to protect personal information in its custody or control; this duty does not cease even though it chooses to send the personal information to someone else.

[para 92] The Public Body does not appear to have a procedure in place to ensure that sensitive information, such as medical opinions, is sent only by secure, traceable means. As noted above, the Public Body does not have a procedure to ensure that personal information, including health information, is addressed and sent only to authorized representatives of organizations or public bodies. In my view, creating such procedures is a reasonable and necessary step to guard against unauthorized access, disclosure, and destruction of personal information.

[para 93] To summarize, I have found that the Public Body did not take reasonable measures to protect the Complainant's personal information. I also find that the failure to take reasonable measures resulted in the Complainant's personal information being disclosed to the consulting company without authorization, and in the Complainant's request and medical opinion becoming lost or destroyed. I will therefore require the Public Body to take reasonable measures to protect the Complainant's personal information in the future.

[para 94] I will therefore order the Public Body to advise its employees in writing to review their correspondence and to ensure that all correspondence containing the Complainant's personal information is sent and addressed only to those authorized to receive it.

[para 95] I will also order the Public Body to ensure that when the Complainant's personal information is sent to persons authorized to receive it, the method of sending the personal information reflects the sensitivity of the personal information.

[para 96] As it appears that the Public Body did not actually disclose the Complainant's personal information to the Appeals Commission, I will not make an order requiring it to revise Business Procedure 4.1 at this time in order to ensure that the Complainant's personal information is not disclosed to the Appeals Commission without authority in the future. However, I suggest to the Public Body that it review this procedure and revise it to ensure compliance with Part 2 of the FOIP Act.

IV. ORDER

[para 97] I make this Order under section 72 of the Act.

[para 98] I order the Public Body to advise its employees in writing to review their correspondence and to ensure that all correspondence containing the Complainant's personal information is sent and addressed only to those authorized to receive it. Compliance with this portion of the order will be met by creating a written procedure that requires employees to check the accuracy of address and representative information they download from the e-Co database prior to sending out correspondence containing personal information.

[para 99] I order the Public Body to ensure that when the Complainant's personal information is sent to persons authorized to receive it, the method of sending the personal information and the manner in which it is addressed reflects the sensitivity of the personal information. Compliance with this portion of the order will be met by creating written procedures to establish that health information and other sensitive personal information of a similar kind will be sent to authorized recipients only, by secure, traceable means.

[para 100] 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.

_____
Teresa Cunningham
Adjudicator