

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2018-13

March 27, 2018

WORKERS' COMPENSATION BOARD

Case File Number 001011

Office URL: www.oipc.ab.ca

Summary: The Complainant made a complaint to the Commissioner that the Workers' Compensation Board (the Public Body) had collected his personal information in contravention of Part 2 of the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) when it obtained a Court order to access his bank account information and that of his wife from Servus Credit Union as part of an investigation as to whether he had received an overpayment in contravention of the *Workers' Compensation Act* or the *Criminal Code*.

The Adjudicator found that the Public Body's collection of the Complainant's personal information was authorized by the FOIP Act as the Complainant's personal information was collected for the purpose of law enforcement, as that term is defined in the FOIP Act.

Statutes Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 4, 33, 34, 72

I. BACKGROUND

[para 1] On April 27, 2015, the Complainant made a complaint to the Commissioner that the Workers' Compensation Board (the Public Body) had collected his personal information in contravention of Part 2 of the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) when it obtained a Court order to access his bank account information and that of his wife from Servus Credit Union as part of an investigation as to whether he had received an overpayment in contravention of either the

Criminal Code, R.S.C. 1985, c. C-46 or the *Workers' Compensation Act* R.S.A. 2000, c. W-15.

[para 2] The Commissioner authorized a mediator to investigate and attempt to resolve the complaint. As this process was unsuccessful, the matter was scheduled for an inquiry. The Commissioner delegated her authority to conduct the inquiry to me.

[para 3] This office issued a notice of inquiry. The notice issued for the inquiry raises the question, "Was there a prosecution at the time the disclosure was made?" with reference to section 4(1)(k) of the FOIP Act. In its submissions, the Public Body confirmed that the information that was the subject of the complaint did not relate to a prosecution. As a result, section 4(1)(k) of the FOIP Act, which excludes information that is related to an ongoing prosecution from the scope of the FOIP Act, has no application in this inquiry.

[para 4] The Complainant did not provide submissions, but relied on his complaint and request for an inquiry.

II. ISSUES

Issue A: Did the Public Body collect the Complainant's personal information? If yes, did it do so in compliance with or in contravention of section 33 of the FOIP Act?

Issue B: Did the Public Body collect the Complainant's personal information directly or indirectly? If indirectly, did it do so in compliance with, or in contravention of, section 34 of the FOIP Act?

III. DISCUSSION OF ISSUES

Issue A: Did the Public Body collect the Complainant's personal information? If yes, did it do so in compliance with or in contravention of section 33 of the FOIP Act?

[para 5] Section 33 of the FOIP Act limits the purposes for which a public body may collect personal information. It states:

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.

A public body may collect personal information for any of the three purposes enumerated in section 33.

[para 6] The Complainant states in his complaint:

The WCB of [Alberta] requested all personal [financial] information from Servus Credit Union and I was under investigation for fraud despite the fact I have never denied an over payment with the employer existed.

Had there been any question of fraud, all WCB had the right to request was deposits from the employer, not all personal finances.

[para 7] The Public Body states in its submissions:

The information collected was directly related to and necessary for making a determination under the WCA and, as previously mentioned, was obtained via a Production Order issued by the Provincial Court of Alberta. Specifically, the information was used to determine if [the Complainant] had fraudulently collected money from both the WCB and [his employer] over the same period of time.

As noted above, the collection of the information from Servus was necessary to determine whether or not there was evidence of fraud on the part of [the Complainant]. If evidence was located, it would be used to determine whether or not a legal action should be initiated under the WCA.

[para 8] The Public Body takes the position that it collected the Complainant's financial information for the purposes of law enforcement, as permitted by section 33(b).

[para 9] Section 1(h) of the FOIP Act defines "law enforcement" where that phrase is used in the FOIP Act. It states:

I In this Act,

(h) "law enforcement" means

(i) policing, including criminal intelligence operations,

(ii) a police, security or administrative investigation, including the complaint giving rise to the investigation, that leads or could lead to a penalty or sanction, including a penalty or sanction imposed by the body conducting the investigation or by another body to which the results of the investigation are referred, or

(iii) proceedings that lead or could lead to a penalty or sanction, including a penalty or sanction imposed by the body

conducting the proceedings or by another body to which the results of the proceedings are referred [...]

[para 10] The investigation described by the Public Body, and for which it obtained the Court order is one meeting the definition set out in section 1(h)(ii), given that when it commenced the investigation, it was contemplated that the investigation could result in penalty or sanction under the *Criminal Code (supra)*, the *Workers' Compensation Act (supra)*, or the *Provincial Offences Procedure Act*, R.S.A. 2000, c. P-34.

[para 11] I find that the Public Body obtained the Complainant's personal information in the course of conducting a police or administrative investigation that could potentially lead to a penalty or sanction. While the investigation in this case did not ultimately lead to prosecution, or to a penalty or sanction, the nature of the investigation conducted was such that it *could* lead to a penalty or sanction. That is all section 1(h) requires for an investigation to fall within the terms of law enforcement. As a result, I find that the Public Body's collection of the Complainant's personal information was authorized by section 33(b) of the FOIP Act.

[para 12] The Complainant's argument appears to be that the Public Body should have known that he had not committed fraud and therefore should not have conducted the investigation it did. Further, he questions the extent of the personal information the Public Body collected in conducting the investigation. Section 33 of the FOIP Act does not give me jurisdiction to review whether a public body *should* have conducted a law enforcement investigation, only whether it collected personal information for the purpose of a law enforcement investigation. In this case, the Public Body clearly exercised its authority to conduct such an investigation.

[para 13] Further, section 33 of the FOIP Act does not impose limits on the amount or kind of personal information a public body may collect or require a public body to collect personal information in the least intrusive manner possible. Rather, if information is collected for the purposes of law enforcement, the collection is authorized by section 33(b).

Issue B: Did the Public Body collect the Complainant's personal information directly or indirectly? If indirectly, did it do so in compliance with, or in contravention of, section 34 of the FOIP Act?

[para 14] Section 34 of the FOIP Act requires a public body to collect personal information directly from the individual whom the information is about, except in specific, enumerated circumstances. It states, in part:

34(1) A public body must collect personal information directly from the individual the information is about unless

[...]

(g) *the information is collected for the purpose of law enforcement*
[...]

Section 34(1)(g) permits a public body to collect personal information from sources other than the individual the information is about when the personal information is collected for a law enforcement purpose.

[para 15] I have found, above, that the Public Body collected the Complainant's personal information for the purpose of law enforcement. As a result, I find that section 34 of the FOIP Act did not require the Public Body to collect the Complainant's personal information directly from the Complainant.

IV. ORDER

[para 16] I make this Order under section 72 of the FOIP Act.

[para 17] I find that the Public Body met its duties to the Complainant under the FOIP Act in relation to its collection of his personal information.

Teresa Cunningham
Adjudicator