

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2019-15

April 9, 2019

WORKERS' COMPENSATION BOARD

Case File Number 003243

Office URL: www.oipc.ab.ca

Summary: An individual had a claim with the Workers' Compensation Board (the Public Body) under the *Workers' Compensation Act* (the "WCA") relating to an injury. The Complainant complains the Public Body disclosed details of a previous WCB injury claim to the physician she had seen regarding the new injury. She complains that this disclosure was not authorized under the *Freedom of Information and Protection of Privacy Act* (FOIP Act).

The Adjudicator accepted the Public Body's argument that the information about the previous claim was relevant to the Complainant's recent claim. The Adjudicator therefore determined that the Public Body had authority to disclose the Complainant's personal information regarding her prior claim to the physician, under section 40(1)(1) of the FOIP Act.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 40, 72

Authorities Cited: AB: Orders 2001-004, F2008-029, F2013-55, F2017-83

I. BACKGROUND

[para 1] The Complainant filed a claim with the Workers' Compensation Board (the Public Body) under the *Workers' Compensation Act* (the "WCA") relating to an injury in November 2015. This injury was to the Complainant's upper back.

[para 2] The Complainant's physician, Dr. G, submitted his report regarding the Complainant's injury to the Public Body in November 2015. The Public Body adjudicator assigned to the claim requested further information from the Complainant. At that time, the adjudicator told the Complainant that the file would be referred to a medical consultant.

[para 3] The adjudicator asked the medical consultant (Dr. R), for her opinion regarding the Complainant's injury. Dr. R drafted a memo (dated February 29, 2016) for the Complainant's file, which stated that Dr. R was not able to conclude that the injury claimed by the Complainant was caused by her work duties.

[para 4] In March 2016, Dr. R sent a letter to Dr. G. The Public Body states that Dr. R's opinion conflicted with Dr. G's diagnosis, and that the purpose of this letter was to come to a consensus via sharing information and discussion. A copy of the letter was provided to me by the Public Body (Tab 11 of the submission). The letter includes information about two of the Complainant's past claims relating to back pain, information relayed by the Complainant's employer to the Public Body regarding the Complainant's work history and activities outside of work that may affect her claim, medical references regarding relevant diagnoses, and Dr. R's opinion regarding the Complainant's claim. Dr. R ended the letter by asking whether Dr. G disagreed with the opinions in the letter. All of these documents were provided by the Public Body in its submission to the inquiry.

[para 5] Approximately one month after this letter was sent to Dr. G, the adjudicator notified the Complainant by letter that her claim was denied. The Complainant raised concerns with the Public Body regarding the information disclosed by Dr. R to her physician (Dr. G). The Complainant then filed a complaint with this Office, complaining that this disclosure was not authorized under the *Freedom of Information and Protection of Privacy Act* (FOIP Act).

II. ISSUES

[para 6] The Notice of Inquiry sent July 26, 2018 lists the issues as follows:

1. Did the Public Body disclose the Complainant's personal information? If yes, did it have authority to do so under sections 40(1) and 40(4) of the FOIP Act?

III. DISCUSSION OF ISSUES

[para 7] The Public Body cited sections 40(1)(c), (e), (f), and (l) as its authority to disclose the Complainant's personal information. These provisions, as well as section 40(4) state:

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,

...

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

...

(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 8] The Public Body states that information about the Complainant's past claims was disclosed to the Complainant's physician, Dr. G by Dr. R, a medical consultant contracted to the Public Body.

[para 9] The Public Body states that medical consultants have the same legislated authority and responsibilities as any Public Body employee. In Order F2013-55 I concluded that WCB medical consultants are employees of the Public Body for the purpose of the FOIP Act, such that a collection of personal information by a medical consultant is a collection by the Public Body. I said (at para. 16):

The Complainant provided me with a copy of most or all of her claim file from the Public Body, including memos written by medical consultants. I note that these memos are written on letterhead of the Medical Services area of the Public Body. While these medical consultants may be contract employees rather than salaried employees, these consultants are performing functions of the Public Body on behalf of the Public Body. I have no reason to believe that these medical consultants have a different status than other Public Body employees for the purposes of the FOIP Act, such that a collection of personal information by a medical consultant would *not* be a collection by the Public Body.

[para 10] In this case, the same facts exist: the memo and letter written by Dr. R (the medical consultant) are on the Public Body's letterhead. The medical consultant appears to be performing a function of the Public Body by gathering information about the

relevant injury and providing a medical opinion to determine whether a claim should be accepted or rejected. Therefore, the disclosure of the Complainant's personal information by Dr. R is a disclosure by the Public Body.

[para 11] The Complainant argues that the information disclosed by Dr. R to her treating physician, Dr. G, was related to a different (previous) claim and was therefore irrelevant to her 2015 claim. The Complainant argues that the opinions relayed in Dr. R's letter are defamatory, misleading and unnecessary.

[para 12] The Public Body states that Dr. R reviewed the Complainant's current and past claims in response to the request for her medical opinion. The Public Body states that as part of assessing the Complainant's 2015 injury claim, Dr. R considered previous injuries to determine "if they remain symptomatic and/or are relevant to the current injury" (submission, at para. 28). Dr. R's memo indicates that any or all of these previous claims could be relevant so each was reviewed. The Public Body also states (at para. 27):

Communication between the WCB's medical consultants and a claimant's treatment provider, which would involve the sharing or disclosing of information, is often necessary to the effective management of the claim and determination of entitlement to benefits. The reasons for disclosure can include explaining the rationale of a medical opinion they have provided or to ensure that all the appropriate treatment providers have the same information. This disclosure of information enables the physician to provide the most informed opinions to the WCB, for their patient. These opinions are taken into consideration when the claim owner is making their entitlement decisions.

[para 13] It seems clear from Dr. R's memo that she reviewed the Complainant's previous injury claims to consider whether they were relevant to the issue at hand. Of the six previous injury claims considered by Dr. R in her memo, two were discussed in her letter to Dr. G. It is also clear from the Public Body's submissions and attachments that Dr. R sent the letter to Dr. G in order to reconcile Dr. G's diagnosis with Dr. R's conflicting opinion.

[para 14] Therefore, I conclude that Dr. R disclosed the Complainant's personal information to Dr. G in the course of forming her opinion regarding the Complainant's claim. I find the disclosure was for the purpose of determining the Complainant's eligibility for compensation and was authorized under section 40(1)(1) of the Act.

[para 15] Section 40(4) limits a public body's disclosure to what is necessary to meet the purpose of the disclosure. The meaning of "necessary" in this provision has been interpreted in past Orders of this Office; it does not mean 'indispensable' (see Orders F2008-029 at para. 51, F2017-83, at para. 14).

[para 16] In Order F2008-029 the adjudicator determined that a disclosure was necessary insofar as it permitted the public body "a means by which they may achieve their objectives... that would be unavailable without [the disclosure]" (at para. 51).

[para 17] The Complainant argues that the Public Body adjudicator could have pursued other avenues to obtain necessary information to make a determination about the Complainant's claim. This may or may not be the case; but section 40(4) does not require that the avenue chosen by the Public Body be the only avenue available.

[para 18] Previous Orders have stated that deference must be given to those in the Public Body making determinations about a claimant's eligibility for compensation (see Orders 2001-004, F2013-55). This deference extends to determining what information to disclose to an examining physician in order to obtain an opinion.

[para 19] The Public Body states (at paras. 35 -37 of its submission):

In this case, Dr. [R's] opinion differed significantly from the diagnosis given by Dr. [G]; therefore, it was necessary to provide Dr. [G] with the information outlined in the March 4, 2016, letter. ...

In the March 4, 2016, letter to Dr. [G], Dr. [R] included a summary of two of the complainant's previous back injury claims that she determined to have the most in common with the current claim and the complainant's ongoing symptoms. ...

The WCB submits that it disclosed the complainant's personal information to Dr. [G] only to the extent necessary to ensure Dr. [G] had a complete assessment of the complainant's current situation and of Dr. [R's] medical opinion, which included summarizing the relevant previous two claims.

[para 20] Dr. R considered the Complainant's past injury claims in her own memo, and disclosed to Dr. G the past injury claims she believed to be relevant to the Complainant's current claim. The information was disclosed in order to try to reconcile inconsistent medical opinions. I have no reason to expect that Dr. R disclosed information for any purpose other than as necessary to form her opinion about the Complainant's claim.

[para 21] I find that the Public Body did not disclose more personal information than necessary for its stated purpose.

IV. ORDER

[para 22] I make this Order under section 72 of the Act.

[para 23] I find that the Public Body had authority to disclose the Complainant's personal information under the FOIP Act.

Amanda Swanek
Adjudicator