



OFFICE OF THE
INFORMATION &
PRIVACY COMMISSIONER
FOR BRITISH COLUMBIA

Order F23-79

WORKSAFEBC

Jay Fedorak
Adjudicator

September 22, 2023

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Summary: A claimant under the *Workers' Compensation Act* complained that WorkSafeBC had used and disclosed his personal information in contravention of ss. 32 and 33 of the *Freedom of Information and Protection of Privacy Act* (FIPPA). The complaint concerned WorkSafeBC granting employees of the Workers' Compensation Appeal Tribunal access to the complainant's claim file on the WorkSafe claims management system. The adjudicator found that WorkSafe had used and disclosed the complainant's personal information only for the purpose of administering his claim file, which was authorized under ss. 32 and 33 of FIPPA.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996 c. 165 ss. 32(a), 33(2)(d), 33(2)(e), 34(a) and 34(b); *Workers' Compensation Act* RSBC 2019 c.1 s. 295(3).

INTRODUCTION

[1] This Order arises from a complaint to the Office of the Information and Privacy Commissioner (OIPC) under s. 42(2) of the *Freedom of Information and Protection of Privacy Act* (FIPPA). A complainant had suffered a workplace injury and applied for compensation from the Workers' Compensation Board (WorkSafeBC). The complainant subsequently appealed a decision of WorkSafeBC, concerning his claim, to the Workers' Compensation Appeals Tribunal (WCAT). The complainant complained that WorkSafeBC used and disclosed his personal information contrary to ss. 32 and 33 of FIPPA when it permitted employees of WCAT to have direct access to his electronic claim file on WorkSafeBC's claims management system (CMS).

[2] Mediation failed to resolve the matters at issue and the complainant requested that his complaint proceed to an inquiry.

Preliminary Matters

[3] Prior to the closure of the Inquiry, the complainant made a written request to the OIPC, in accordance with OIPC policies and procedures, to add new issues to the inquiry. These included accuracy of personal information, notice of collection and the destruction of records, among others. WorkSafeBC objected in writing to the complainant's request to add these new issues. The Director of Adjudication considered the complainant's request and WorkSafeBC's written objections and decided not to add the new issues to the inquiry.

[4] Despite the decision of the Director of Adjudication, the complainant raised these issues in his submission. In accordance with the decision of the Director of Adjudication, I decline to consider these issues.

[5] Later, in its response submission to the inquiry, WorkSafeBC attempted to add a new issue of its own. It submitted that s. 3(6) of FIPPA applied in this case. This provision stipulates that FIPPA does not limit the information available to a party to a proceeding. WorkSafeBC argues that this provision deprives the OIPC of jurisdiction to consider any complaint regarding information available to a party to a proceeding.

[6] Unlike the complainant, and contrary to OIPC requirements, WorkSafeBC did not request permission to add this new issue. The OIPC *Instructions for Written Inquiries* stipulate that parties wanting to add new issues must make a request to the registrar of inquiries at least two weeks prior to the date for initial submission. These instructions clearly state that, in general, adjudicators will not consider new issues that parties raise in their submissions.

[7] WorkSafeBC failed to comply with these requirements for introducing new issues to an inquiry, and I see no reason to permit it to raise this new issue here. Therefore, I decline to consider this issue.

ISSUES

[8] The issues to be decided in this inquiry are whether WorkSafeBC:

1. Used the complainant's personal information contrary to s. 32 of FIPPA.
2. Disclosed the complainant's personal information contrary to s. 33 of FIPPA.

DISCUSSION

[9] **Background** – The parties do not provide any information in their submissions about the background to this case.

1. Did WorkSafeBC use the complainant's personal information contrary to s. 32 of FIPPA?

[10] Section 32 of FIPPA requires a public body to ensure that personal information in its custody or under its control is used only in accordance with the limits of that provision. The relevant provisions of FIPPA are:¹

- 32** A public body must ensure that personal information in its custody or under its control is used only
- (a) for the purpose for which that information was obtained or compiled, or for a use consistent with that purpose (see section 34),

[11] Section 34 defines the term “consistent purpose” used in s. 32(a) as follows:

- 34** For the purposes of section 32 (a)..., a use of personal information is consistent with the purpose for which the information was obtained or compiled if the use
- (a) has a reasonable *and* direct connection to that purpose, and
 - (b) is necessary for performing the statutory duties of, or for operating a program or activity of, the public body that uses or discloses the information.

[12] FIPPA defines “personal information” as “recorded information about an identifiable individual other than contact information.” The parties make no submissions about the nature of the information in the complainant’s claim file. It seems obvious, however, that a claimant’s claim file contains information about the claimant, and I conclude that the complainant’s file in this case contains his personal information.

Use for the purpose for which the information was obtained or compiled s. 32(a)

[13] The complainant acknowledges that s. 32(a) authorizes WorkSafe to use his personal information to administer his claim. In accordance with WorkSafe policies and procedures, the complainant submits that this information should be contained in the “claim file”. He submits that WorkSafe also used his personal information “to create materially incomplete disclosures on two occasions that I can establish, which were intended to facilitate the creation of an expert

¹ The provisions of FIPPA cited in this order were amended in November 2021. The amendments altered the language somewhat but did not change the meaning of those provisions in any way that impacts my analysis or decision. I have chosen to quote the amended, current wording of the provisions.

assessment”. In addition, according to the complainant, WorkSafeBC “uses my personal information to elicit unconsented-to psychological evidence”.²

[14] The complainant alleges WorkSafeBC failed to provide certain of his medical records to a medical expert. Specifically, he says that he and WorkSafeBC agreed on which records WorkSafeBC would forward to the expert, but the expert did not receive all of them. Ultimately, the complainant had to provide the expert with the missing records himself.

[15] WorkSafeBC submits that the only purpose for which it has used the complainant’s personal information is to administer his claim for compensation.³

[16] The parties agree that the WorkSafeBC has obtained and compiled the personal information of the complainant solely for the purposes of administering his claim for compensation.

Analysis

[17] I see no evidence before me that WorkSafeBC has used the complainant’s personal information for any purpose unrelated to the administration of his claim for compensation. The one unsupported example that the complainant identifies, regarding the medical expert, does not constitute a use of his personal information. That example concerns an alleged failure of WorkSafeBC to disclose additional personal information to a medical expert that the complainant supplied for that purpose. Section 32(a) is not relevant with respect to this issue. In fact, the issue of WorkSafe failing to disclose information to the medical expert is outside the jurisdiction of FIPPA altogether.

[18] Therefore, I find that WorkSafeBC did not use the complainant’s personal information for any purposes other than administering his claim and that this use complied with the requirements of s. 32(a). As I have found that WorkSafe BC used the complainant’s personal information only for the purpose for which it collected that information, I do not need to consider whether it used the information for a “consistent purpose” in accordance with s. 34.

2. Did WorkSafeBC disclose the complainant’s personal information contrary to s. 33 of FIPPA?

[19] Section 33 of FIPPA requires a public body to ensure that it does not disclose personal information in its custody or under its control except in accordance with the limits of that provision. The relevant provisions of FIPPA are:

²Complainant’s initial submission, para. 151; Complainant’s reply submission, paras. 96-97.

³ WorkSafeBC’s response submission, para. 58.

- 33** (1) A public body may disclose personal information in its custody or under its control only as permitted by subsections (2) to (9) or by section 33.3.
- (2) A public body may disclose personal information in any of the following circumstances:
- ...
 - (d) for the purpose for which the information was obtained or compiled, ...
 - (e) in accordance with an enactment of British Columbia or of Canada that authorizes or requires the disclosure;⁴

[20] The complainant asserts that WorkSafeBC disclosed more of his personal information to WCAT than FIPPA authorizes. He submits that WorkSafeBC must disclose a copy of his claim file to all parties to his appeal, including WCAT. His complaint is that, instead of providing a paper or electronic copy of his claim file to WCAT, WorkSafeBC granted WCAT employees read-only access to its CMS. The complainant alleges that the CMS contains more of his personal information than is contained in the copy of his claim file. He submits that this gave WorkSafeBC an opportunity to unduly influence the appeal decision of WCAT by secretly submitting additional information of which he is unaware through posting on his CMS file.⁵

[21] WorkSafeBC denies the complainant's allegations. It submits that the only occasion where the CMS might contain more information than the copy of the claim file produced for the appeal would be if further information came to light after it had provided a copy of the claim file to all parties. In those circumstances, WCAT would decide whether the information was relevant to the appeal. If WCAT decided that it was relevant, it would provide a copy of that information to all parties to the appeal to give them an opportunity to make submissions about that information at the WCAT hearing.⁶

[22] WorkSafeBC submits that s. 33(2)(d) authorizes it to give WCAT access to the CMS file of any appellant. The purpose that it has collected the personal information on the CMS file is to administer the claim. WorkSafeBC submits that the process of administering the claim includes issuing a decision that is subject to appeal by the WCAT. As the complainant appealed WorkSafeBC's decision regarding his claim, the appeal becomes part of the process of administering the claim. Therefore, WorkSafeBC argues that disclosure of the CMS file to WCAT is for the purpose of administering the claim, which was the purpose for which the personal information on the CMS file was compiled.⁷

[23] In addition, WorkSafeBC submits that s. 33(2)(e) authorizes it to give WCAT access to the CMS file of any appellant. It cites s. 295(3) of the *Workers' Compensation Act* (WCA)⁸, which requires WorkSafeBC to "provide the appeal tribunal and the parties to the appeal with a copy of the Board's records respecting the matter

⁴ As noted above in note 1, FIPPA was amended in November 2021. This order references the new version. Previously, the provisions in ss. 33(2)(d) and (e) were in ss. 33.2(a) and 33.1(c).

⁵ Complainant's initial submission, paras. 169-73.

⁶ WorkSafeBC's response submission, para. 45.

⁷ WorkSafeBC's response submission, paras. 36-38.

⁸ RSBC 2019 c.1

under Appeal”. WorkSafeBC asserts that the WCA grants WCAT the authority to determine what information it requires, subject only to that information being “relevant, necessary and appropriate”. The WCA also grants the WCAT with the authority to determine what information is “relevant, necessary and appropriate”.⁹

Analysis

[24] For the reasons that follow I find that WorkSafeBC has established that disclosing the complainant’s personal information to WCAT was authorized under both ss. 22(3)(d) and (e).

[25] The complainant concedes that WorkSafeBC must disclose to WCAT all his personal information that is necessary to his appeal of the WorkSafeBC decision regarding his claim. The problem, according to the complainant, is that he suspects WorkSafeBC secretly disclosed additional information to WCAT. However, there is no evidence before me to indicate that the CMS file WorkSafeBC shared with WCAT contained any personal information about the complainant that was not relevant for the purpose of administering his claim.

[26] Further, I conclude that administering a WorkSafeBC claim requires WorkSafeBC to process the claim through all its stages. Those stages can include an appeal to WCAT and implementation of any subsequent WCAT order about the claim. I am satisfied that the purpose for WorkSafeBC compiling or obtaining the complainant’s personal information was the same as the purpose for disclosing that information to WCAT - to administer his WorkSafeBC claim. Therefore, I find that s. 33(2)(d) applies because WorkSafeBC's disclosure of the complainant’s personal information to WCAT was for the purpose for which the information was obtained or compiled.

[27] It is also clear that s. 33(1)(e) applies because the disclosure was in accordance with an enactment of British Columbia. As noted above, s. 295(3) of the WCA requires WorkSafeBC provide WCAT and the parties to the appeal with a copy of WorkSafeBC’s “records respecting the matter under appeal”. There is no evidence before me to indicate that the CMS file contains any personal information about the complainant that is not relevant to the administration of his claim or is not part of the records respecting the matter under appeal. Therefore, I find the disclosure of the complaint’s personal information to WCAT was in accordance with the WCA, which is an enactment of British Columbia.

⁹ WorkSafeBC’s response submission, paras. 42-43.

CONCLUSION

[29] Under s. 58(3)(e) of FIPPA, for the reasons provided above, I confirm the decision of WorkSafeBC to use the complainant's personal information and to disclose it to WCAT.

September 22, 2023

ORIGINAL SIGNED BY

Jay Fedorak, Adjudicator

OIPC File No.: F21-87864