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Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 275-1998
November 25, 1998

INQUIRY RE: A decision to refuse access to an anonymous letter about the applicant sent to the Workers' Compensation Board of British Columbia

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1. Description of the review

As Information and Privacy Commissioner, I conducted a written inquiry at the Office of the Information and Privacy Commissioner (the Office) on September 21, 1998 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). This inquiry arose out of a request for review of a decision by the Workers' Compensation Board (the WCB) to refuse access to an anonymous letter sent to the WCB regarding the applicant.

2. Documentation of the inquiry process

On March 16, 1998 the applicant, BC Research Inc., wrote to the WCB to request a copy of an anonymous letter sent to a named employee of the WCB, in his capacity as a member of the Industrial Musculoskeletal Injury Reduction Program Society (IMIRP).

On March 23, 1998, the WCB responded by denying access to the anonymous letter under sections 22(1), 22(2)(e), (f), and (h), 22(3)(b), and (d), and sections 15(1)(a), (c), (d), and (f) of the Act.

BC Research Inc. requested a review of this decision by my Office on May 5, 1998. The Office opened a file on this review on May 14, 1998, with the ninety-day review period due to expire on August 12, 1998.

On 20 July 1998, BC Research Inc. informed the Office that it wished the matter to proceed to an inquiry before the Information and Privacy Commissioner. The parties agreed to the inquiry taking place on September 21, 1998 and to an extension of the legislated review time to accommodate this timing. The WCB also decided to drop its

application of section 15 of the Act to the record in question but to maintain its reliance on section 22.

3. Issues under review and the burden of proof

The issues to be reviewed concern the WCB's application of sections 22(1), 22(2)(e), (f), (g), and (h) and 22(3)(b), and (d) of the Act to an anonymous letter about the applicant written to the WCB. (The WBC included 22(2)(g) during the inquiry.)

Section 57 of the Act establishes the burden of proof on the parties in this inquiry. Under section 57(2), if the record or part that the applicant is refused access to under section 22 contains personal information about a third party, it is up to the applicant to prove that disclosure of the information would not be an unreasonable invasion of the third party's personal privacy.

The relevant sections of the Act are as follows:

Disclosure harmful to personal privacy

22(1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.

(2) In determining under subsection (1) or (3) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether

...

(e) the third party will be exposed unfairly to financial or other harm,

(f) the personal information has been supplied in confidence,

(g) the personal information is likely to be inaccurate or unreliable, and

(h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant.

(3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

...

(b) the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation,

...

(d) the personal information relates to employment, occupational or educational history,

....

4. The record in dispute

The record in dispute is an anonymous letter sent to a named employee of the WCB, in his capacity as a member of the Industrial Musculoskeletal Injury Reduction Program Society (IMIRP, [the Society]). The understanding of the applicant, which the WCB has not challenged, is that the letter makes reference to BC Research Inc. and contains allegations regarding its illegal use of ergonomic software.

5. BC Research Inc.'s case

The applicant wishes access to the record in dispute and submits that section 22 of the Act does not apply to it. I have discussed below certain specific arguments in this regard.

6. The Workers' Compensation Board's case

The WCB received an anonymous letter addressed to one of its managers, who is a representative of the WCB on the IMIRP. The letter arrived as IMIRP (which also received a copy of the letter) was in the final stages of assessing bids on a contract, one of which was from the applicant in this inquiry. The letter claimed that the applicant was using a software program without a license. The Society has discussed with BC Research "the only allegation of substance in the letter." (Submission of the WCB, p. 3) The WCB states that this allegation was a factor in BC Research not receiving the contract in question.

I have discussed below the WCB's submissions on the application of section 22.

7. Discussion

The applicant has attempted to make this inquiry more complicated than it need be by blaming the anonymous complaint letter for its failure to win a substantial consulting contract from IMIRP. The applicant appeals to me to level the playing field for businesses in this province. I wish to restate, as I have had to do so often, that my jurisdiction is limited to making a decision on access to a record in dispute under the Act. As the WCB pointed out in its final reply submission, the applicant is at liberty to initiate proceedings in a court of law to seek to remedy remaining problems, such as the belief that the anonymous letter libels the company.

Section 22: Disclosure harmful to personal privacy of third parties

The applicant believes that, without the author's name, the record in dispute is not personal information, that it was not sent in confidence, and that it was not sent to convey information. (Submission of the Applicant, p. 2) Based on my review of the record in dispute, I disagree with each of these assertions. The letter does contain personal information within the definition of personal information in the Act and it was clearly sent in confidence, since the author went so far as to omit his or her name.

With respect to section 22(2)(f), it is completely clear, from internal evidence, that the letterwriter supplied it in confidence to the WCB. In this connection, it is appropriate for the WCB to have a policy of protecting the sources of complaints in the workplace. (Submission of the WCB, pp. 5-7) See Order No. 32-1995, January 26, 1995, p. 7; Order No. 70-1995, December 14, 1995, p. 8; Order No. 143-1997, January 16, 1997, pp. 5-6.

The WCB further invokes sections 22(2)(g) and (h). Based on the submission of the WCB and my own reading of the record in dispute, I accept the argument of the WCB that the personal information in it may be inaccurate or unreliable. Its disclosure might also "unfairly damage the reputation of any person referred to in the record requested by the applicant." (Submission of the WCB, pp. 6-7) See Order No. 70. As the WCB submitted:

> Surely there is even a stronger rationale to protect the confidentiality of those individuals referred to in a complaint made to a WCB representative when they may not even know that the complaint has been made or that they are referred to in the complaint, when no one knows if the references to them are accurate, and when their employer may subject them to disciplinary action or other retribution because they had the ill-luck to be named in a complaint and the employer suspects they may have had something to do with it. (Submission of the WCB, p. 8)

These were all relevant circumstances for the WCB to take into account in making its decision on disclosure.

Section 22(3)(b): information compiled and identifiable as part of an investigation into a possible violation of law,

I cannot accept the submission of the WCB that the investigation by the Society was "an investigation into a possible violation of law" under the terms of the Act, because the Society is not a public body under the Act. Nor is the WCB claiming that its employee was acting as a surrogate for it in receiving this complaint, as opposed to being a Board member of IMIRP as a representative of the WCB.

Section 22(3)(d): personal information relates to employment, occupational or educational history,

I agree with the WCB that the personal information in the record in dispute relates to the employment and occupational history of third parties. (Submission of the WCB, pp. 7-8)

I find that disclosure of the record in dispute would be an unreasonable invasion of the privacy of third parties on the basis of section 22(1) of the Act. Further, the applicant has not met its burden of proof under section 57(2) of the Act.

8. Order

I find that the Worker's Compensation Board of British Columbia was required to refuse access to the withheld personal information in the record in dispute under section 22(1) of the Act. Accordingly, under section 58(2)(c) of the Act, I require the Worker's Compensation Board of British Columbia to refuse access to the withheld information in the record in dispute.

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David H. Flaherty
Commissioner

November 25, 1998