

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2022-05

February 9, 2022

WORKERS' COMPENSATION BOARD

Case File Number 003239

Office URL: www.oipc.ab.ca

Summary: The Complainant 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 that in 2011 he was contacted by a survey company who asked him about his experience with the Public Body including detailed information about the medical issues he sought coverage for. The Complainant argues that his personal information was provided to this survey company without his consent, and in contravention of the *Freedom of Information and Protection of Privacy Act* (FOIP Act).

Mediation was authorized but did not fully resolve the issues between the parties and the Commissioner agreed to conduct an inquiry.

The Adjudicator found that the Public Body's disclosure of the Complainant's personal information to the survey company was for the purpose of evaluating the services provided to the Complainant. This purpose was consistent with the purpose for which the information was collected, and was authorized under the Act. The amount of information disclosed was also limited to what was reasonable for the purpose.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 39, 40, 41, and 72

Authorities Cited: AB: Orders F2004-010, F2008-029

I. BACKGROUND

[para 1] The Complainant had multiple claims with the Workers' Compensation Board (the Public Body) under the *Workers' Compensation Act* (the "WCA"). The Complainant complains that in 2011 he was contacted by a survey company, Malatest, that worked for the Public Body. He states that during the call, the Malatest employee included details about the Complainant's life, such as his date and place of birth and information about a claim he had with the Public Body, including the date of his injury (December 2004) and type of injury his claim relates to.

[para 2] The Complainant states that Malatest also had information about the Complainant's medical diagnoses (that may or may not relate to the claim), and the date and type of an injury from 1979 (which may or may not relate to the Complainant's claim).

[para 3] The Complainant states that he asked the Malatest employee where they had obtained this information, and that the employee said it was obtained from "the directors office of the Workers' Compensation Board of Edmonton" (letter attached to complaint). The Complainant further states that the employee said the Public Body was having the survey conducted in order to determine claimants' satisfaction with the Public Body's service.

[para 4] The Complainant states that he did not respond to the Malatest employee's questions, and after the call he contracted the "Workers' Compensation Board Director Office". The Complainant states:

I spoke to the Director of the conversation (sic) and state (sic) how dare do you release my info to a third partie (sic) he said if you don't like it phone your MLA and huing (sic) up on me

[para 5] Mediation was authorized but did not fully resolve the issues between the parties and the Commissioner agreed to conduct an inquiry.

II. ISSUES

[para 6] The Notice of Inquiry dated June 10, 2019, states the issues in this inquiry as follows:

1. Did the Public Body disclose the Complainant's personal information?

To answer this issue, the parties should provide as much evidence as possible relating to if there was a disclosure of the Complainant's personal information or not, such as affidavit evidence, copies of any notes etc.

2. If yes, did it have authority to do so under sections 40(1) and 40(4) of the Act?

III. DISCUSSION OF ISSUES

Preliminary issue – scope of inquiry and time extensions requested by the Complainant

[para 7] The complaint giving rise to this inquiry was submitted in June 2016, about alleged actions that took place in 2011.

[para 8] The Complainant requested an inquiry into file #003239, in January 2017. A Notice of Inquiry was issued on June 10, 2019. The sole issue for the inquiry is whether the Public Body disclosed the Complainant's personal information to a survey company, and if so, whether it had authority under the FOIP Act to do so.

[para 9] The deadline for the Complainant's initial submission set out in the Notice was July 11, 2019. The Complainant requested an extension to November 2020; the Public Body did not object to that request. The file was placed in abeyance until November 2020. On November 4, 2020, the Complainant requested another extension to November 2021. In this latter request, the Complainant indicated that he had other ongoing proceedings with the Public Body that may affect the outcome of the inquiry. The file remained in abeyance until November 2021.

[para 10] In November 2021, the Complainant sent in several emails (dated November 5, 7, 9, 11, and 15, 2021) regarding this inquiry. In the November 5, 2021 emails, the Complainant confirmed that he wishes to continue with this inquiry.

[para 11] By emails dated November 5, and November 9, 2021, the Complainant requested a seven-month extension to provide his initial submission. A submission schedule had not yet been provided to the parties but I understood the Complainant to mean that he was unable to provide a submission within the next seven months. In his November 5 email, the Complainant stated the reason for the extension request is that he had been in a car accident. In his November 9 email, the Complainant listed seven additional reasons that did not relate to a request for more time, or to the issues in the inquiry. In an email dated November 15, 2021, the Complainant indicated that he was asking for time to obtain legal counsel. Lastly, in a November 15, 2021 email, the Complainant seemed to demand that this inquiry be moved to the Court of Queen's Bench.

[para 12] The Public Body objected to the Complainant's extension request. It pointed out that the Complainant continues to threaten various legal proceedings, and would like a timely resolution to this matter.

[para 13] By letter dated November 17, 2021, I informed the parties that I would not grant the Complainant another lengthy extension. I noted that the Complainant had had more than two years since the Notice of Inquiry was issued to prepare for this inquiry. I also noted that the Complainant's 2020 and 2021 extension requests were concerned with issues that were not being considered in this inquiry, such as physicians working as contractors to the Public Body, and the conflict of interest the Complainant believes arises from that arrangement.

[para 14] I reminded the Complainant about the scope of this inquiry, and provided a submission schedule for the parties. I noted that while the usual amount of time provided to parties for initial submissions was four weeks, I would grant the Complainant until early January 2022 (more than six weeks) to make his initial submission.

[para 15] The Complainant failed to meet that new deadline. Instead, he requested another seven-month extension to provide his initial submission. The Complainant stated that he required

that time to compile documents and that some documents needed to be sworn. The Public Body again objected to this extension request.

[para 16] By letter dated January 24, 2022, I reiterated my decision not to allow a lengthy extension. However, as the Complainant bears an evidentiary burden in this inquiry (discussed further in the next section of this Order), I granted the Complainant an extension to February 7, 2022. I said:

If the Complainant is unable to obtain all relevant documentation by that date, he should provide as much information as he has about the alleged disclosure of his personal information by the Public Body to a survey company. The Complainant should include any information he has about this disclosure, including what information he believes was disclosed by the Public Body and why he believes the Public Body disclosed that information to the survey company. As stated in my November 2021 letter, any arguments not related to this issue will be disregarded.

For any documents the Complainant is unable to obtain in time to provide with his initial submission, the Complainant may:

- Identify what information is in the documents;
- Explain why the documents are relevant to the issues in the inquiry;
- Provide reasons he was unable to obtain them by his due date; and
- Provide a date by which the documents can be provided, along with reasons for requiring that amount of time.

I will then decide whether the missing documents are required to make my decision, and how to proceed.

[para 17] The Complainant provided his initial submission on January 27, 2022. The submission addresses why he ought to have been granted a further extension to June or July 2022 to make his submission. The Complainant states that he is bedridden due to several injuries, and that “no one can put a file together within a blink of an eye of two to three four days”. The Complainant did not provide any detail about what documents he was unable to obtain by his deadline of February 7, 2022.

[para 18] As such, I do not know what other information the Complainant wanted to submit to this inquiry. I also do not know why the Complainant was unable to obtain this information in the four years since he requested an inquiry (or three years since the Notice of Inquiry was issued). Had the Complainant provided the details set out in my January 24, 2022 letter as to what documents he wanted to submit to this inquiry, and had those details supported granting a further extension, I may have provided the Complainant with additional time. Absent any such detail or explanation, there was no reason to grant the Complainant any additional time to submit additional documents or information to this inquiry.

[para 19] The Complainant’s submission also discusses alleged wrongdoings of the Public Body that do not relate to the issue in this inquiry, such as physicians working as contractors for the Public Body, allegations about tax evasion and other types of fraud. As I informed the Complainant in my November 17, 2021 letter, I am not addressing allegations that do not relate to the issues set out in the Notice of Inquiry.

[para 20] The Complainant's submission does include a brief reference to the issue in this inquiry, which I will discuss in the next section of this Order.

1. Did the Public Body disclose the Complainant's personal information?

[para 21] The Complainant has the initial or "evidential" burden of proof, in that he must adduce some evidence as to why he believes his personal information was collected by the Public Body in the circumstances he alleges. If the Complainant discharges this burden, then the Public Body has the burden of demonstrating that its disclosure of the Complainant's personal information was in accordance with Part 2 of the FOIP Act (Order F2004-010 at paragraph 5).

[para 22] Personal information is defined in section 1(n) of the Act as follows:

1(n) "personal information" means recorded information about an identifiable individual, including

(i) the individual's name, home or business address or home or business telephone number,

(ii) the individual's race, national or ethnic origin, colour or religious or political beliefs or associations,

(iii) the individual's age, sex, marital status or family status,

(iv) an identifying number, symbol or other particular assigned to the individual,

(v) the individual's fingerprints, other biometric information, blood type, genetic information or inheritable characteristics,

(vi) information about the individual's health and health care history, including information about a physical or mental disability,

(vii) information about the individual's educational, financial, employment or criminal history, including criminal records where a pardon has been given,

(viii) anyone else's opinions about the individual, and

(ix) the individual's personal views or opinions, except if they are about someone else;

[para 23] The Complainant's initial complaint states that the Public Body disclosed his name, date and place of birth, the date and type of injury his claim relates to, particular diagnoses (that may or may not relate to the claim), and the date and type of an injury from a decade previous (which may or may not relate to the Complainant's claim).

[para 24] The Public Body acknowledges that it contracted with Malatest to conduct surveys of injured workers who have claims with the Public Body. It states that these surveys are conducted monthly; a sample of workers who have had claims closed in the previous month are contacted.

[para 25] The Public Body states that upon receiving notice of the Complainant's initial complaint to this Office in 2016, it conducted an internal review of the matter. The Public Body confirmed that the Complainant had a 2004 claim with the Public Body. This claim was closed in March 2005. The Public Body was unable to confirm that Malatest contacted the Complainant about this 2004 claim. The Public Body states that its Corporate Development unit reviewed the April 2005 sample file sent to Malatest for the survey; the Complainant's name did not appear. The unit then reviewed the survey sample file for January – March and May 2005; the Complainant's name did not appear in those files.

[para 26] The Public Body also states that in July or August of 2012, it received an enquiry from an MLA on the Complainant's behalf, apparently about the survey. The Public Body states that as a result, it confirmed that the Complainant had been called for his input on the survey in July 2012, in relation to a more recent claim than the Complainant's 2004 claim.

[para 27] The Public Body states that Malatest confirmed that it attempted to contact the Complainant twice for the survey, but was unable to reach the Complainant. The Public Body states that the Complainant had not been contacted for the survey at any other time.

[para 28] It is not clear how the Complainant came to know about the survey if Malatest was unable to reach him. Possibly Malatest left a message, or did briefly speak to the Complainant without completing the survey.

[para 29] In any event, the Public Body acknowledges that it disclosed the Complainant's name, telephone number, claim number and date of accident to Malatest, for the purpose of contacting the Complainant for the injured worker survey.

[para 30] I understand that the Complainant believes he was contacted by Malatest in 2011. However, the timing of the enquiry from the MLA's office (July or August of 2012) and the fact that Malatest has a record of the Complainant being in the sample list for the survey for July 2012, all lead me to conclude that the Complainant was contacted in 2012.

[para 31] I also accept the Public Body's submissions regarding how it conducts its injured worker's survey; specifically, that the claimants contacted are those whose claims are closed the month prior. The Public Body states that the Complainant was on the sample list for the survey in relation to a claim more recent than the Complainant's 2004 claim. The information provided to Malatest would have related to the recent claim and not the 2004 claim, as the Complainant alleges. The Complainant has not provided any evidence to support his allegations regarding the information he states the Malatest employee had about his 2004 claim; nor has he told me about any evidence or documentation he has on this point that he was unable to gather by the deadline for his submission.

[para 32] Based on the information before me, I conclude that the Public Body disclosed only the Complainant's name, telephone number, claim number and date of accident to Malatest. This information constitutes the Complainant's personal information. Therefore, the Public Body disclosed the Complainant's personal information to Malatest.

2. Did the Public Body have authority to do so under sections 40(1) and 40(4) of the Act?

[para 33] Section 40(1) of the Act sets out circumstances in which a public body may disclose personal information. Section 40(1)(d) permits disclosure where the individual has provided consent to the disclosure, in the prescribed manner. However, disclosing personal information without consent is not a contravention of section 40(1)(d), or section 40(1) more broadly, if there is another provision that permits disclosure.

[para 34] The Public Body argues that it was authorized to disclose the Complainant's personal information under sections 40(1)(b) and (c) of the Act. Those provisions, as well as section 40(4), state:

40(1) A public body may disclose personal information only

...

(b) if the disclosure would not be an unreasonable invasion of a third party's personal privacy under section 17,

(c) for the purpose for which the information was collected or compiled or for a use consistent with that purpose,

...

(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 35] Section 41 defines what constitutes a "consistent purpose" under section 40(1)(c):

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 36] The meaning of "necessary" in sections 40(4) and 41 has been interpreted in past Orders of this Office; it does not mean 'indispensable'. 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 37] The Public Body states that it contracted with Malatest until 2012 to conduct surveys of injured workers, in order to assess the satisfaction of the services provided to claimants. It contracted with a third party to ensure anonymity of claimants in their responses. The Public Body provides information about the survey in its WCB Worker's Handbook, a copy of which was provided to me. The Handbook states:

To help WCB-Alberta improve services, we hire an independent research company to survey a sample of injured workers when their claims end. The research company may contact you to take part in the survey. The research company does not tell us who has been contacted and no names are attached to any of the survey responses.

Basic information about your claim may be shared with a research partner contracted by WCB to conduct customer satisfaction surveys.

[para 38] With respect to section 40(1)(c), the Public Body states that using claimant information for the purpose of the satisfaction survey is consistent with the purpose for which it was collected. It argues that it discloses only the personal information necessary for Malatest to collect feedback necessary for the Public Body to assess the services it provides. It states that "[s]takeholder feedback is an important part of ensuring the statutory scheme is met."

[para 39] I agree that conducting a survey of claimants to evaluate the services provided to those claimants has a reasonable and direct connection to the provision of that service. Therefore, the disclosure of claimant information to the research company conducting the survey has a reasonable and direct connection to the purpose for which the claimant information was collected, as set out in section 41(a). Regarding whether the disclosure was necessary for the program, I agree that the disclosure to Malatest was a means by which the Public Body could achieve its objective of evaluating how it provides services that would be unavailable without the disclosure, for the purpose of section 41(b).

[para 40] Given the above, I find that the disclosure was authorized under section 40(1)(c).

[para 41] Section 40(4) limits a public body's disclosure to what is necessary to meet the purpose of the disclosure. In this case, the Public Body disclosed the Complainant's name, telephone number, claim number and date of accident to Malatest. The name and telephone number are clearly required to contact the individual. The Public Body states that it discloses the claim number for two reasons:

- if a claimant questions the legitimacy of the survey, they can call the Public Body and obtain confirmation that they were included in the survey sample file; and
- if the Public Body receives complaints about the survey, the claim number allows Malatest to identify the employee who conducted the survey and follow up as necessary.

[para 42] The date of the accident is provided because many claimants have multiple claims with the Public Body and the date of the accident helps identify, along with the claim number, which claim the survey relates to.

[para 43] The Public Body states in its submission that during the review, the Complainant alleged that he continues to receive calls from Malatest. The Public Body states that this allegation cannot be true, as it stopped using Malatest for its surveys in 2012.

[para 44] The Public Body also states that as a result of the MLA enquiry in 2012, the Complainant's name was placed on the Public Body's "do not call" list for the injured survey worker.

[para 45] The Complainant disputes the Public Body's statement that it no longer uses Malatest to conduct the survey. In his initial submission he states that the Public Body

...perjured themselves in front of the oipc bored (sic) where they stated they do not use a third party for brownie points as a survey which they stated they do not use them anymore which is false they purged (sic) themselves by stating they did not use them anymore and I've contacted and they still are being used by the workers compensation board of Alberta.

[para 46] The Complainant has not provided any evidence to support his allegation that he continued to receive calls from Malatest. The Complainant has also not told me about any evidence or documentation he has on this point that he was unable to gather by the deadline for his submission.

[para 47] Whether the Public Body continues to use Malatest to conduct the surveys or has contracted with another organization to conduct the surveys, does not affect its authority to disclose the personal information it did, in order to conduct the survey.

[para 48] From the information before me, I have no reason to doubt the Public Body's explanations. I find that the information disclosed by the Public Body was reasonably limited to information that is necessary to conduct the survey effectively. I find the disclosure meets the obligation in section 40(4).

[para 49] Because the Public Body contracted Malatest to perform the surveys on its behalf, it might be argued that providing claimant information to Malatest for the purpose of the survey is a *use* of information rather than a disclosure. The use of personal information is governed by section 39 of the Act. The relevant portions of section 39 of the Act state:

39(1) A public body may use personal information only

(a) for the purpose for which the information was collected or compiled or for a use consistent with that purpose,

(b) if the individual the information is about has identified the information and consented, in the prescribed manner, to the use, or

(c) for a purpose for which that information may be disclosed to that public body under section 40, 42 or 43.

...

(4) A public body may use personal information only to the extent necessary to enable the public body to carry out its purpose in a reasonable manner.

[para 50] Similar to the authority to disclose personal information under section 40(1)(c), the Public Body is authorized to use personal information where that use is consistent with the purpose for which it was collected. For the same reasons I found that the disclosure was permitted under section 40(1)(c), the use of the Complainant's information for the survey would be permitted under section 39(1)(a), if providing information to Malatest for the survey was better characterized as a use.

[para 51] Further, for the same reasons I found that the disclosure was limited to what was necessary in the circumstances, the use of the information would also be limited to what was necessary under section 39(4), if providing information to Malatest for the survey was better characterized as a use.

IV. ORDER

[para 52] I make this Order under section 72 of the Act.

[para 53] I find that the Public Body had authority to disclose the Complainant's personal information as it did.

Amanda Swanek
Adjudicator