



Office of the
Saskatchewan Information
and Privacy Commissioner

INVESTIGATION REPORT 293-2016

Saskatchewan Workers' Compensation Board

March 29, 2017

Summary:

The Complainant had rescinded his consent he gave to a doctor to disclose his personal health information to the Saskatchewan Workers' Compensation Board (WCB). In spite of rescinding his consent, the WCB collected his personal health information pursuant to *The Workers' Compensation Act, 2013*. The Office of the Information and Privacy Commissioner (IPC) found that the collection provisions of *The Health Information Protection Act* (HIPA) and *The Freedom of Information and Protection of Privacy Act* (FOIP) do not apply. The IPC recommended that WCB ensure that it educate health care professionals who attend to or are consulted with respect to an injury of a worker do not unnecessarily collect the consent of injured workers.

I BACKGROUND

- [1] The Complainant is an injured worker who was receiving benefits from the Saskatchewan Workers' Compensation Board (WCB). The Complainant was referred to a doctor at the CBI Health Group (CBI).
- [2] On May 12, 2016, the Complainant met with the doctor. The doctor requested that the Complainant sign a form. The form was entitled "Consent to the Collection, Use, and Disclosure of Personal or Personal Health Information". The Complainant signed the form.

- [3] On May 25, 2016, the Complainant met with the doctor again. At this meeting, the Complainant rescinded his consent. On the form, he wrote “I withdraw my consent as I was not properly informed of my rights.”
- [4] Then, the doctor at CBI completed a discharge report dated May 31, 2016.
- [5] In a letter dated May 31, 2016, WCB advised the Complainant that it had received communication from the doctor indicating that the two sessions with the Complainant went poorly and that further appointments would not be possible. Since there would be no further appointments, WCB advised the Complainant that his benefits were being terminated.
- [6] In a letter dated November 16, 2016, the Complainant wrote a letter to WCB outlining his concerns. Specifically, that the doctor at CBI did not have his consent to share the discharge report with WCB. He requested that the discharge report be pulled from his file and to have his benefits reinstated.
- [7] WCB responded in a letter dated December 7, 2016. WCB indicated that it does not know why the doctor sought the Complainant’s consent. It indicated that WCB has authority under its legislation to gather the information necessary to make decisions on claims without consent.
- [8] The Complainant was dissatisfied with WCB’s response. In a letter dated December 12, 2016, he requested that my office open an investigation. On December 15, 2016, my office notified the Complainant and WCB that it would be undertaking an investigation.

II DISCUSSION OF THE ISSUES

1. Do the collection provisions of *The Health Information Protection Act (HIPA)* apply to this case?

- [9] The focus of this Investigation Report is the collection of a report about the Complainant by WCB. I note that the Complainant is also taking issue with the doctor at CBI

disclosing the report without his consent. The disclosure by CBI is the subject of the Investigation Report 292-2016.

[10] In its submission, WCB asserts that it obtains information relevant to adjudicating and managing an injury claim pursuant to section 44 of *The Workers' Compensation Act, 2013* (WCA). In other words, it collected the report pursuant to the WCA. Section 44 of WCA provides:

44(1) Subject to section 46, no compensation is payable to a worker or worker's dependant unless:

(a) except in the case of the death of the worker, the worker gives notice of his or her injury to his or her employer and the board as soon as possible after sustaining that injury and before the worker has voluntarily left his or her employment; and

(b) the claim for compensation is made within six months after:

- (i) the date the worker sustained the injury; or
- (ii) in the case of death, the date of death.

(2) A notice required pursuant to subsection (1) must:

(a) state:

- (i) the name and address of the worker;
- (ii) the cause of the injury; and
- (iii) the place where the injury happened; and

(b) include any proofs of the claim that the board may require.

[11] In order for HIPA to be engaged, three elements must be present. First, there must be personal health information. Second, there must be a trustee. Third, the trustee must have custody or control of the personal health information.

[12] In this case, I find that all three elements are present. First, the report at issue contains personal health information as defined by subsection 2(m) of HIPA. Second, WCB qualifies as a trustee pursuant to subsection 2(t)(i) of HIPA. Third, WCB has custody and control of the report containing the personal health information.

[13] While I find that HIPA is engaged, I find that the collection provisions of HIPA do not apply. The reason is subsection 4(4)(h) of HIPA provides that the collection provisions found in Part IV of HIPA does not apply to personal health information that is obtained for the purposes of the WCA. Subsection 4(4)(h) of HIPA provides:

4(4) Subject to subsections (5) and (6), Parts II, IV and V of this Act do not apply to personal health information obtained for the purposes of:

...

(h) *The Workers' Compensation Act, 2013*;

[14] As such, I find that the collection provisions in Part IV of HIPA does not apply to this case.

2. Does *The Freedom of Information and Protection of Privacy Act (FOIP)* apply to this case?

[15] Subsection 4(6) of HIPA provides that FOIP applies to an enactment listed in subsection 4(4) of HIPA. Subsection 4(6) of HIPA provides:

4(6) The Freedom of Information and Protection of Privacy Act and The Local Authority Freedom of Information and Protection of Privacy Act apply to an enactment mentioned in subsection (4) unless the enactment or any provision of the enactment is exempted from the application of those Acts by those Acts or by regulations made pursuant to those Acts.

[16] As noted earlier, WCA is listed in subsection 4(4) of HIPA. Therefore, I need to determine if FOIP applies to this matter.

[17] FOIP applies to government institutions and it governs how they collect, use, and/or disclose personal information.

[18] WCB qualifies as a government institution pursuant to subsection 2(1)(d)(ii) of FOIP. Subsection 24(1) of FOIP defines personal information as information about an identifiable individual that is recorded in any form. Subsection 24(1.1) of FOIP provides that personal information does not include information that constitutes personal health information as defined in HIPA. Earlier, I found that the information in the report qualifies as personal health information as defined by HIPA. Therefore, such information cannot qualify as “personal information” under FOIP.

[19] Since there is only personal health information in this matter, I find that FOIP does not apply.

[20] In the course of this investigation, my office recommended to WCB that it educate health care professionals who attend to or are consulted with respect to an injury of a worker pursuant to section 55 of the WCA do not unnecessarily obtain the consent of injured workers to collect, use, and/or disclose personal health information. WCB accepted my office's recommendation.

III FINDINGS

[21] I find that collection provisions of HIPA do not apply to this case.

[22] I find that FOIP does not apply to this case.

IV RECOMMENDATION

[23] I recommend that WCB follow through with the recommendation described in paragraph [20].

Dated at Regina, in the Province of Saskatchewan, this 29th day of March, 2017.

Ronald J. Kruzeniski, Q.C.
Saskatchewan Information and Privacy
Commissioner