

SASKATCHEWAN
OFFICE OF THE
INFORMATION AND PRIVACY COMMISSIONER

INVESTIGATION REPORT F-2007-001

Saskatchewan Workers' Compensation Board

Summary:

The Complainant initiated a claim under *The Workers Compensation Act, 1979* for compensation arising from what he alleged was a workplace injury. The Saskatchewan Workers' Compensation Board (WCB) collected, used and disclosed both personal information under *The Freedom of Information and Protection of Privacy Act* (FOIP) and personal health information under *The Health Information Protection Act* (HIPA) of the Complainant. The Commissioner found that the WCB disclosed to the Complainant's employer more personal information and personal health information than was necessary. The Commissioner further found that the WCB failed to adequately safeguard the Complainant's information when it sent copies of his personal information and personal health information to the Complainant by ordinary mail. That package was not received by the Complainant and cannot be accounted for. The Commissioner recommended that WCB should make reasonable efforts to retrieve documents improperly disclosed to the employer in order to destroy them and should officially apologize to the Complainant for the loss of his file.

The Commissioner, after reviewing the policies and procedures of WCB intended to protect the privacy of claimants and the confidentiality of their personal information and personal health information, concluded that the WCB in certain key areas had not met the requirements of HIPA, of FOIP or of the *Overarching Personal Information Privacy Framework for Executive Government*.

The Commissioner recommended a number of revisions to:

- the organization of WCB to manage the 'access and privacy file',
- the policies and procedures of WCB for the handling of personal information of claimants and
- the website and public information materials of WCB to make them more helpful to the public.

Statutes Cited: *The Health Information Protection Act*, S.S. 1999, c. H-0.021, ss. 2(h), 2(m), 2(t)(i), 4(4), 4(6), 9, 10, 16, 25, 27(3)(b), 27(4)(e)(ii)(B), 42(1)(c), 52;
The Freedom of Information and Protection of Privacy Act, S.S. 1990-91, c. F-22.01, ss. 2(1)(d)(i), 2(1)(e), 8, 21, 23(3), 24, 25, 26, 27, 28, 29, 30, 31, 32, 33(d), 60;
The Workers' Compensation Act, 1979, S.S. 1979, c. W-17.1, ss. 171, 171.1, 171.2;
The Freedom of Information and Protection of Privacy Regulations, c. F-22.01, Reg. 1, Appendix, Part I, s. 4

Authorities Cited: OIPC Review Reports H-2004-001, F-2004-006; OIPC Investigation Reports 2005-001, H-2005-002.

Nautical Data International Inc. v. Canada (Minister of Fisheries and Oceans), 2005 FC 407 at para.8; *Canada (Attorney General) v. Canada (Information Commissioner)*, [2004] 4 F.C.R. 181 at para. 20, 255 F.T.R. 56, 15 Admin. L.R. (4th) 58, 32, C.P.R. (4th) 464, 117 C.P.R. (2d) 85, 2004 FC 431, rev'd (2005), 253 D.R.R. (4th) 590, 335 N.R. 8, 40 C.P.R. (4th) 97, 2005 FCA 199, leave to appeal to S.C.C. requested; *Canada (Attorney General) v. Canada (Information Commissioner)*, [2002] 3 F.C. 630 at para. 20, 216 F.T.R. 247, 41 Admin. L.R. (3d) 237, 2002 FCT 128, 2430901; *Canada Inc. v. Canada (Minister of Industry)*, [2002] 1 F.C. 421 at para. 102, (2001), 282 N.R. 284, 45 Admin L.R. (3d) 182, (2001) 14 C.P.R. (4th) 449, 2001 FCA 254, leave to appeal to S.C.C. refused, [2001] S.C.C.A. No 537 (Q.L.); *Lavigne v. Canada (Office of the Commissioner of Official Languages)*, [2002] 2 S.C.R. 773, (2002) SCC 53 at para 25; *R. v. Dymont*, [1988] 2 S.C.R. 417; *R. v. Mills*, [1999] 3 S.C.R. 668; *Dagg v. Canada (Minister of Finance)*, [1997] 2 S.C.R. 402; *R. v. Plant*, [1993] 3 S.C.R. 281; *R. v. Duarte*, [1990] 1 S.C.R. 30; *R. v. Edward*, [1996] 1 S.C.R. 128; *Canada (Information Commissioner) v. Canada (Commissioner of the Royal Canadian Mounted Police)*, [2003] 1 S.C.R. 66, 2003 SCC 8.

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Saskatchewan Workers' Compensation Board, *Information for Workers*, (WCB, 2005); Saskatchewan Workers' Compensation Board, *Information for Employers Handbook*, (WCB, 2004); Saskatchewan Workers' Compensation Board, *Annual Report 2005*, (WCB, 2005); Saskatchewan Workers' Compensation Board, *Policy Manual, Section 10.0, Doc 10.6* (WCB, 2003); Saskatchewan Workers' Compensation Board, *Policy Manual, Section 10.0, Doc 10.7* (WCB, 2005); Saskatchewan Workers' Compensation Board, *Procedures Manual, Section 10.0, Doc 10.1* (WCB, 2000); Saskatchewan Workers' Compensation Board, *Procedures Manual*,

Section 10.0, Doc 10.2 (WCB, 2000); Saskatchewan Workers' Compensation Board, *Procedures Manual, Section 10.0, Doc 10.4* (WCB, 2005); Saskatchewan Workers' Compensation Board, *Procedures Manual, Section 10.0, Doc 10.5* (WCB, 1995)

Saskatchewan Workers' Compensation Board, *Training Manual, Acknowledgement of Confidentiality* (WCB, 2005); Saskatchewan Workers' Compensation Board, *Training Manual, Confidentiality at WCB* (WCB, 2006); Saskatchewan Workers' Compensation Board, *Training Manual, Enhanced Security Claims* (WCB, 2006); Saskatchewan Workers' Compensation Board, *Training Manual, Conflict of Interest Policy* (WCB, 1996); Saskatchewan Workers' Compensation Board, *Training Manual, Anonymity/Third Party Information*, (WCB, 2006); Saskatchewan Workers' Compensation Board, *Training Manual, Release of Information, Section 171.1 Workers' Compensation Act*, (WCB, 2006); Saskatchewan Workers' Compensation Board, *Training Manual, Sending a Letter (Smartmaster Documents)* (WCB, 2006)

Saskatchewan Justice, *An Overarching Personal Information Privacy Framework For Executive Government*, (Government of Saskatchewan, 2003); Saskatchewan Justice, *Training Course for Government Employees*, (Saskatchewan Justice Access and Privacy Branch, 2007); Saskatchewan Justice Access and Privacy Branch, *Access and Privacy Training Session for FOIP Coordinators*, (Regina: Saskatchewan Justice, March 1, 2007); Government of Saskatchewan, *Chief Privacy Officer Contact Information*, (Government of Saskatchewan, 2005); Government of Saskatchewan, *Privacy Protection Checklist*, (Government of Saskatchewan, 2005)

Government of Saskatchewan, News Release, *Government Upgrades Privacy Practices* (September 11, 2003); Saskatchewan Labour, Worker's Advocates, available at <http://www.labour.gov.sk.ca/advocate/INDEX.HTM>

Worksafebc, *Access to Information and Protection of Privacy at Worksafebc*; available at http://www.worksafebc.ca/publications/how_to_work_with_the_wcb/Assets/PDF/access_fippa.pdf ; Government of Alberta, *Alberta Freedom of Information and Protection of Privacy Guidelines and Practices Manual, Chapter 7: Protection of Privacy, 7.6 Use of Personal Information*, (Alberta Government Services Access and Privacy Branch, 2005); Government of Alberta, *Alberta Freedom of Information and Protection of Privacy Guidelines and Practices Manual, Chapter 2: Administration of the FOIP Act, 2.1 Public Body – Roles and Responsibilities* (Alberta Government Services Access and Privacy Branch, 2005); Government of British Columbia, *Train the Trainer Manual, Section 1: Facilitator Resources, The Role of the Facilitator* (March 7, 2007); available at http://www.msar.gov.bc.ca/privacyaccess/TT_Manual/Sec1_Facilitator.htm#role; Government of Manitoba, *Administration of FIPPA by Local Public Bodies, Daily Administration and Coordination - Guide for Local*

Public Bodies, Daily Administration and Coordination – Access and Privacy Coordinator; available at <http://www.gov.mb.ca/chc/fippa/manuals/guide/intro.html#i21>;
Government of Ontario, *The Manual (Access & Privacy), Chapter 2: Administration of the Act, Freedom of Information and Privacy* Coordinator; available at <http://www.accessandprivacy.gov.on.ca/english/manual/CHAPTER2.htm#coordinator>

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I. BACKGROUND

[1] On November 2, 2006 the Complainant requested that our office investigate an alleged breach of privacy by the Saskatchewan Workers' Compensation Board (WCB). This related to two claims by the Complainant under *The Workers' Compensation Act, 1979*¹ (the WCA) and certain actions by the WCB. The complaint related to three different issues:

- (1) The disclosure of correspondence detailing personal health information of the Complainant to the Complainant's Employer.
- (2) The disclosure of correspondence detailing personal financial information of the Complainant to the Complainant's Employer.
- (3) WCB mailed the Complainant's WCB claim file comprised of personal information including health and financial information of the Complainant by ordinary mail. It failed to reach the Complainant and was not returned by Canada Post to the WCB.

[2] We understand that the following events occurred on this claim file:

- (1) The Complainant initiated a claim for compensation pursuant to the WCA in respect of an injury the Complainant attributed to his workplace.
- (2) WCB disclosed to the Employer certain personal health information and personal financial information of the Complainant.
- (3) The Complainant requested a copy of his file in August 2006 for purposes of an appeal pursuant to the WCA. The Complainant obtained his WCB file in September 2006.
- (4) The Complainant requested an "*update of his file*" on October 19, 2006. This was to include any additional documents on his claim file subsequent to the date when he previously accessed a copy of his claim file in September 2006. The updated file was posted in an envelope addressed to the Complainant at his residence and sent by ordinary mail on or about October 19, 2006. We have determined that the envelope containing the WCB file was not received by the Complainant. We further understand that there is no information available to either the Complainant or WCB as to what became of the file sent by ordinary mail.
- (5) The Complainant received a new copy of the updated claim file on October 31, 2006 when the Case Manager delivered this package to the Complainant's residence.

¹ *The Workers' Compensation Act, 1979*, S.S. 1979, c. W-17.1 (hereinafter WCA)

[3] WCB has been described in its public literature² as follows:

It is an independent, quasi-judicial administrative tribunal representing workers and employers, appointed by the Lieutenant Governor in Council to administer The Act. An Executive, led by the Chief Executive Officer, manages the day-to-day operations of the WCB. They are guided by the following vision and mission statement:

The Saskatchewan Workers' Compensation Board's mission and sole purpose is to serve injured workers and employers. Our vision is to excel in the development and delivery of workers' compensation and injury prevention programs and services.

[4] Workers' compensation is described by the WCB³ as follows:

Workers' compensation is a no-fault insurance program that protects workers and employers against the result of work injuries. No-fault means that, regardless of who is responsible, injured workers are compensated for their losses, and both workers and employers are protected against the risks and uncertainties of lawsuits. Employers pay for this insurance. Since 1930, this system has brought stability and cost-effective protection to the workplace.

II. AUTHORITY FOR OIPC INVESTIGATION

[5] Our authority for undertaking this investigation is founded in two different Saskatchewan statutes.

[6] Section 42(1)(c) of *The Health Information Protection Act* (HIPA) provides as follows:

42(1) *A person may apply to the commissioner for a review of the matter where:*

...

(c) the person believes that there has been a contravention of this Act.

² Saskatchewan Workers' Compensation Board (hereinafter WCB), *Information for Workers*, page 2, available at <http://www.wcsask.com/WCBPortal/ShowProperty/WCBRepository/formsPublications/publications/infoForWorkers/pdfContent>

³ *Ibid.*, at 2

[7] Section 52(b), (c), (d) and (e) of HIPA provides as follows:

52 *The commissioner may:*

...

(b) *after hearing a trustee, recommend that the trustee:*

(i) *cease or modify a specified practice of collecting, using or disclosing information that contravenes this Act; and*

(ii) *destroy collections of personal health information collected in contravention of this Act;*

(c) *in appropriate circumstances, comment on the collection of personal health information in a manner other than directly from the individual to whom it relates;*

(d) *from time to time, carry out investigations with respect to personal health information in the custody or control of trustees to ensure compliance with this Act;*

(e) *comment on the implications for protection of personal health information of any aspect of the collection, storage, use or transfer of personal health information.*

[8] In addition, I have undertaken an investigation pursuant to section 33(d) of *The Freedom of Information and Protection of Privacy Act* (FOIP). That provides as follows:

33 *The commissioner may:*

...

(d) *from time to time, carry out investigations with respect to personal information in the possession or under the control of government institutions to ensure compliance with this Part.*

[9] WCB is a “*government institution*” for purposes of FOIP⁴. It is therefore also a “*trustee*” for purposes of HIPA⁵.

[10] Much of the personal information in question in this investigation qualifies as “*personal health information*”⁶ within the meaning of HIPA. Much of the balance of information in question qualifies as “*personal information*”⁷ within the meaning of FOIP.

⁴ *The Freedom of Information and Protection of Privacy Act*, S.S. 1990-91, c. F-22.01 (hereinafter FOIP), s. 2(1)(d)(i)

⁵ *The Health Information Protection Act*, S.S. 1999, c. H-0.021 (hereinafter HIPA), ss. 2(t)(i), 2(h)

⁶ HIPA, s. 2(m)

III. OIPC INVESTIGATIVE PROCESS

[11] We reviewed the following documents from the Complainant's claim file:

- (1) Letter from the WCB Case Manager to the Complainant dated February 21, 2006
- (2) Letter from WCB Health Care Services to the Complainant dated March 15, 2006
- (3) Letter from WCB Health Care Services to the Employer dated March 15, 2006
- (4) Letter from WCB Case Manager to the Complainant dated April 20, 2006
- (5) Letter from WCB Case Manager to the Complainant dated May 16, 2006
- (6) Memorandum to file from WCB dated June 26, 2006
- (7) Fax Sheet from WCB to the Employer dated July 20, 2006
- (8) Memorandum to file from WCB dated July 25, 2006
- (9) Letter from WCB Case Manager to the Complainant dated August 23, 2006
- (10) Letter from WCB Case Manager to the Complainant dated October 18, 2006 (#1)
- (11) Letter from WCB Case Manager to the Complainant dated October 18, 2006 (#2)
- (12) Letter from Complainant to WCB Case Manager dated October 19, 2006
- (13) Memorandum to file from WCB dated October 30, 2006

[12] In the course of our investigation we learned that copies of documents #1, 2, 4, 9, 10, 11, and 12, were all forwarded to the Employer at the same time they went to the Complainant.

[13] Our office proceeded to gather information and records relevant to the complaint. This included information produced for the public by WCB. We reviewed the policies and procedures of WCB provided by its Solicitor. We also had the opportunity to discuss the processes of WCB with the WCB's Solicitor and to view the type of personal information of claimants routinely available to WCB claim staff by means of a desktop computer at WCB offices.

[14] In the course of our investigation, we identified a number of issues with respect to the specific information practices of WCB, the management of the 'access and privacy file' within WCB, and the training of staff with respect to access and privacy. Our office

⁷ FOIP, s. 24

receives a significant number of complaints and requests for review in respect of actions and decisions of the WCB. I am mindful that WCB files represent a large personal health information database in the province.⁸ I determined that it would be useful both to the WCB as well as to applicants and complainants generally to explore those larger access and privacy issues which we identified in the course of responding to the Complainant's specific concerns.

[15] Our office presented a submission in November 2006 to the WCA Committee of Review.⁹ This submission included a number of recommendations for change in the operations of WCB. The focus was principally on the question of access to information by WCB claimants and not on disclosure of information to third parties.

IV. ISSUES

- 1. Which provisions in *The Freedom of Information and Protection of Privacy Act* (FOIP) apply to WCB?**
- 2. Which provisions of *The Health Information Protection Act* (HIPA) apply to WCB?**
- 3. What does the *Overarching Personal Information Privacy Framework for Executive Government* require of WCB?**
- 4. Has WCB met the general requirements in section 16 of HIPA?**
- 5. Reflections and Findings on WCB Compliance with General Statutory and Privacy Framework Requirements**
 - A. Has WCB met its Obligations under HIPA?**
 - B. Has WCB met its Obligations under FOIP?**
 - C. Has WCB met its Obligations under the Privacy Framework?**
- 6. Did WCB improperly disclose personal health information to the Complainant's Employer?**
- 7. Did WCB improperly disclose personal financial information to the Employer?**
- 8. Did WCB improperly disclose personal information and personal health information to persons unknown?**

V. ANALYSIS

⁸ In 2005, 327,064 workers in Saskatchewan were covered by WCB. In that same year there were 39,904 claims reported to WCB. [Saskatchewan Workers' Compensation Board, *Annual Report 2005* (WCB, 2005) at 2; available at www.wcbask.com]

⁹ Office of the Saskatchewan Information and Privacy Commissioner (hereinafter OIPC), *OIPC Submission to the Workers' Compensation Board Review Committee* (October, 2006); available at www.oipc.sk.ca under the 'What's New' tab

1. Which provisions in *The Freedom of Information and Protection of Privacy Act* (FOIP) apply to WCB?

[16] Part IV of FOIP addresses the protection of privacy. It deals with the collection, use, disclosure, access to and correction of personal information in a record in the possession or under the control of a government institution. Consequently, sections 24 to 33 as well as other portions of FOIP apply to the WCB.

[17] Personal information is defined in FOIP as follows:

24(1) Subject to subsections (1.1) and (2), “personal information” means personal information about an identifiable individual that is recorded in any form, and includes:

(a) information that relates to the race, creed, religion, colour, sex, sexual orientation, family status or marital status, disability, age, nationality, ancestry or place of origin of the individual;

(b) information that relates to the education or the criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;

*(c) **Repealed.** 1999, c.H-0.021, s.66.*

*(d) any identifying number, symbol or other particular assigned to the individual, other than the individual’s health services number as defined in *The Health Information Protection Act*;*

(e) the home or business address, home or business telephone number or fingerprints of the individual;

(f) the personal opinions or views of the individual except where they are about another individual;

(g) correspondence sent to a government institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to the correspondence that would reveal the content of the original correspondence, except where the correspondence contains the views or opinions of the individual with respect to another individual;

(h) the views or opinions of another individual with respect to the individual;

(i) information that was obtained on a tax return or gathered for the purpose of collecting a tax;

(j) information that describes an individual’s finances, assets, liabilities, net worth, bank balance, financial history or activities or credit worthiness; or

(k) the name of the individual where:

(i) *it appears with other personal information that relates to the individual; or*

(ii) *the disclosure of the name itself would reveal personal information about the individual.*

(1.1) “Personal information” does not include information that constitutes personal health information as defined in The Health Information Protection Act.

(2) **“Personal information” does not include information that discloses:**

(a) *the classification, salary, discretionary benefits or employment responsibilities of an individual who is or was an officer or employee of a government institution or a member of the staff of a member of the Executive Council;*

(b) *the salary or benefits of a legislative secretary or a member of the Executive Council;*

(c) *the personal opinions or views of an individual employed by a government institution given in the course of employment, other than personal opinions or views with respect to another individual;*

(d) *financial or other details of a contract for personal services;*

(e) *details of a licence, permit or other similar discretionary benefit granted to an individual by a government institution;*

(f) *details of a discretionary benefit of a financial nature granted to an individual by a government institution;*

(g) *expenses incurred by an individual travelling at the expense of a government institution.*

(3) **Notwithstanding clauses (2)(e) and (f), “personal information” includes information that:**

(a) *is supplied by an individual to support an application for a discretionary benefit; and*

(b) *is personal information within the meaning of subsection (1).*

[Emphasis added]

[18] The type of information that is in the possession or under the control of WCB relating to the Complainant would be all of the personal information in his WCB file that does not qualify as “*personal health information*”¹⁰. Much of this personal information relates to his work history, his income particulars and other financial information with respect to his claim or entitlements under the WCA.

¹⁰ FOIP, s. 24(1.1)

[19] The other relevant provisions in FOIP are as follows:

25 No government institution shall collect personal information unless the information is collected for a purpose that relates to an existing or proposed program or activity of the government institution.

26(1) A government institution shall, where reasonably practicable, collect personal information directly from the individual to whom it relates, except where:

- (a) the individual authorizes collection by other methods;*
- (b) the information is information that may be disclosed to the government institution pursuant to subsection 29(2);*
- (c) the information:*
 - (i) is collected in the course of, or pertains to, law enforcement activities, including the detection, investigation, prevention or prosecution of an offence and the enforcement of:*
 - (A) an Act or a regulation; or*
 - (B) an Act of the Parliament of Canada or a regulation made pursuant to an Act of the Parliament of Canada; or*
 - (ii) pertains to:*
 - (A) the history, release or supervision of persons in custody, on parole or on probation; or*
 - (B) the security of correctional institutions;*
- (d) the information is collected for the purpose of commencing or conducting a proceeding or possible proceeding before a court or tribunal;*
- (e) the information is collected, and is necessary, for the purpose of:*
 - (i) determining the eligibility of an individual to:*
 - (A) participate in a program of; or*
 - (B) receive a product or service from;**the Government of Saskatchewan or a government institution, in the course of processing an application made by or on behalf of the individual to whom the information relates; or*
 - (ii) verifying the eligibility of an individual who is participating in a program of or receiving a product or service from the Government of Saskatchewan or a government institution;*
- (f) the information is collected for the purpose of:*
 - (i) management;*

(ii) *audit; or*

(iii) *administration of personnel;*

of the Government of Saskatchewan or one or more government institutions;

(g) *the commissioner has, pursuant to clause 33(c), authorized collection of the information in a manner other than directly from the individual to whom it relates; or*

(h) *another manner of collection is authorized pursuant to another Act or a regulation.*

(2) *A government institution that collects personal information that is required by subsection (1) to be collected directly from an individual shall inform the individual of the purpose for which the information is collected unless the information is exempted by the regulations from the application of this subsection.*

(3) *Subsections (1) and (2) do not apply where compliance with them might result in the collection of inaccurate information or defeat the purpose or prejudice the use for which the information is collected.*

27 *A government institution shall ensure that personal information being used by the government institution for an administrative purpose is as accurate and complete as is reasonably possible.*

28 *No government institution shall use personal information under its control without the consent, given in the prescribed manner, of the individual to whom the information relates, except:*

(a) *for the purpose for which the information was obtained or compiled, or for a use that is consistent with that purpose; or*

(b) *for a purpose for which the information may be disclosed to the government institution pursuant to subsection 29(2).*

29(1) *No government institution shall disclose personal information in its possession or under its control without the consent, given in the prescribed manner, of the individual to whom the information relates except in accordance with this section or section 30.*

(2) *Subject to any other Act or regulation, personal information in the possession or under the control of a government institution may be disclosed:*

(a) *for the purpose for which the information was obtained or compiled by the government institution or for a use that is consistent with that purpose;*

(b) *for the purpose of complying with:*

- (i) a subpoena or warrant issued or order made by a court, person or body that has the authority to compel the production of information; or
 - (ii) rules of court that relate to the production of information;
 - (c) to the Attorney General for Saskatchewan or to his or her agent or legal counsel for use in providing legal services;
 - (d) to legal counsel for a government institution for use in providing legal services to the government institution;
 - (e) for the purpose of enforcing any legal right that the Government of Saskatchewan or a government institution has against any individual;
 - (f) for the purpose of locating an individual in order to:
 - (i) collect a debt owing to Her Majesty in right of Saskatchewan or to a government institution by that individual; or
 - (ii) make a payment owing to that individual by Her Majesty in right of Saskatchewan or by a government institution;
 - (g) to a prescribed law enforcement agency or a prescribed investigative body:
 - (i) on the request of the law enforcement agency or investigative body;
 - (ii) for the purpose of enforcing a law of Canada or a province or territory or carrying out a lawful investigation; and
 - (iii) if any prescribed requirements are met;
 - (h) pursuant to an agreement or arrangement between the Government of Saskatchewan or a government institution and:
 - (i) the Government of Canada or its agencies, Crown corporations or other institutions;
 - (ii) the government of another province or territory of Canada, or its agencies, Crown corporations or other institutions;
 - (iii) the government of a foreign jurisdiction or its institutions;
 - (iv) an international organization of states or its institutions; or
 - (v) a local authority as defined in the regulations;
- for the purpose of administering or enforcing any law or carrying out a lawful investigation;
- (h.1) for any purpose related to the detection, investigation or prevention of an act or omission that might constitute a terrorist activity as defined in the Criminal Code, to:
 - (i) the Government of Canada or its agencies, Crown corporations or other institutions;
 - (ii) the government of another province or territory of Canada, or its agencies, Crown corporations or other institutions;

- (iii) *the government of a foreign jurisdiction or its institutions;*
- (iv) *an international organization of states or its institutions; or*
- (v) *a local authority as defined in the regulations;*
- (i) *for the purpose of complying with:*
 - (i) *an Act or a regulation;*
 - (ii) *an Act of the Parliament of Canada or a regulation made pursuant to an Act of the Parliament of Canada; or*
 - (iii) *a treaty, agreement or arrangement made pursuant to an Act or an Act of the Parliament of Canada;*
- (j) *where disclosure is by a law enforcement agency:*
 - (i) *to a law enforcement agency in Canada; or*
 - (ii) *to a law enforcement agency in a foreign country;*
- pursuant to an arrangement, a written agreement or treaty or to legislative authority;*
- (k) *to any person or body for research or statistical purposes if the head:*
 - (i) *is satisfied that the purpose for which the information is to be disclosed is not contrary to the public interest and cannot reasonably be accomplished unless the information is provided in a form that would identify the individual to whom it relates; and*
 - (ii) *obtains from the person or body a written agreement not to make a subsequent disclosure of the information in a form that could reasonably be expected to identify the individual to whom it relates;*
- (l) *for the purpose of:*
 - (i) *management;*
 - (ii) *audit; or*
 - (iii) *administration of personnel;*
- of the Government of Saskatchewan or one or more government institutions;*
- (m) *where necessary to protect the mental or physical health or safety of any individual;*
- (n) *in compassionate circumstances, to facilitate contact with the next of kin or a friend of an individual who is injured, ill or deceased;*
- (o) *for any purpose where, in the opinion of the head:*
 - (i) *the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure; or*
 - (ii) *disclosure would clearly benefit the individual to whom the information relates;*
- (p) *where the information is publicly available;*

(q) to the office of the Provincial Auditor, or to any other prescribed person or body, for audit purposes;

(r) to the Ombudsman;

(s) to the commissioner;

(t) for any purpose in accordance with any Act or regulation that authorizes disclosure; or

(u) as prescribed in the regulations.

(3) A government institution that is a telephone utility may disclose names, addresses and telephone numbers in accordance with customary practices.

(4) Subject to any other Act or regulation, the Provincial Archivist may release personal information that is in the possession or under the control of The Saskatchewan Archives Board where, in the opinion of the Provincial Archivist, the release would not constitute an unreasonable invasion of privacy.

30(1) *Subject to subsection (2) and to any other Act, the personal information of a deceased individual shall not be disclosed until 25 years after the death of the individual.*

(2) Where, in the opinion of the head, disclosure of the personal information of a deceased individual to the individual's next of kin would not constitute an unreasonable invasion of privacy, the head may disclose that personal information before 25 years have elapsed after the individual's death.

31(1) *Subject to Part III and subsection (2), an individual whose personal information is contained in a record in the possession or under the control of a government institution has a right to, and:*

(a) on an application made in accordance with Part II; and

(b) on giving sufficient proof of his or her identity;

shall be given access to the record.

(2) A head may refuse to disclose to an individual personal information that is evaluative or opinion material compiled solely for the purpose of determining the individual's suitability, eligibility or qualifications for employment or for the awarding of government contracts and other benefits, where the information is provided explicitly or implicitly in confidence.

32(1) *An individual who is given access to a record that contains personal information with respect to himself or herself is entitled:*

(a) to request correction of the personal information contained in the record if the person believes that there is an error or omission in it; or

(b) to require that a notation be made that a correction was requested but not made.

(2) *Within 30 days after a request pursuant to clause (1)(a) is received, the head shall advise the individual in writing that:*

(a) the correction has been made; or

(b) a notation pursuant to clause (1)(b) has been made.

(3) *Section 12 applies, with any necessary modification, to the extension of the period set out in subsection (2).*

[20] FOIP does not exempt WCB records. It does however make sections 171 to 171.2 of the WCA paramount to FOIP¹¹.

171(1) Subject to sections 171.1 and 171.2, no officer of the board and no person authorized to make an inspection or inquiry under this Act shall divulge or allow to be divulged, except in the performance of his duties or under the authority of the board, any information obtained by him or that has come to his knowledge in connection with that inspection or inquiry.

(2) *Every person who contravenes subsection (1) is guilty of an offence and liable on summary conviction to a fine of not more than \$1,000.*

171.1(1) Where:

(a) a worker or any person whom he has authorized in writing to be his representative; or

(b) in the case of a deceased worker, any of his dependants;

has requested reconsideration of or applied for a review of a decision made pursuant to this Act, the board shall, at the written request of the worker, his representative or his dependant, as the case may be, allow the worker, his representative or his dependant, as the case may be, access to information respecting that worker for the purposes of this Act, but the person receiving the information shall use that information only for the purposes of that reconsideration or review.

(2) *Where the board is of the opinion that any medical report which the worker or his representative has requested contains information of a sensitive nature which, if provided directly to the worker or his representative, would cause injury to the worker or any other person, the board shall provide the information to the worker's treating physician instead of providing it to the worker or his representative.*

(3) *Where a physician receives information pursuant to subsection (2), he shall explain to the worker or his representative, as the case may be, the contents of the medical report to assist the worker or his representative in his request for reconsideration of or application for a review of the decision of the board.*

¹¹ FOIP, s. 23(3)

171.2(1) Where an employer has requested reconsideration of or applied for a review of a decision made pursuant to this Act with respect to a worker's claim for compensation, notwithstanding that the employer is not a party to the reconsideration or review, the board may on written request, in accordance with this section, grant the employer, or a representative of the employer on presentation of the employer's written authorization, access to the information that the board used to make its decision with respect to:

(a) the facts of the situation in which the injury occurred; or

(b) the percentage of the cost of compensation which has been assigned by the board to the injury cost record of that employer with respect to the injury the worker suffered out of and in the course of his employment with that employer;

that is obtained on or after the date this section comes into force for the purposes of this Act, but the person receiving the information shall use that information only for the purposes of that reconsideration or review.

(2) Where a request is made pursuant to subsection (1), the board shall notify the worker or any person whom he has authorized in writing to be his representative of the request and the information that it will grant access to and inform the worker or his representative that he may make any objection to the release of the information within the time specified in the notice.

(3) On the expiration of the time mentioned in subsection (2), the board shall, after consideration of any objections, determine what information it will grant the employer or his representative access to and so notify the worker or his representative in writing sent by registered mail.

(4) The worker may, within 21 days of the date that the notice pursuant to subsection (3) is mailed, request the board to reconsider its decision made pursuant to subsection (3).

(5) The board shall not grant the employer or his representative access to any information until the expiration of the time allowed for a request pursuant to subsection (4) or the determination of the request, whichever is later.

(6) The board shall inform the worker or his representative of all information it has granted an employer or his representative access to pursuant to this section.

(7) An employer may request the board to reconsider its decision with respect to the information the board has granted access to within 21 days of the date of that decision.

[21] Paramountcy is contingent on a determination that the FOIP and the WCA provisions cannot co-exist and that to comply with one would require a violation of the other. A paramountcy clause however is not the same thing as an exemption. Since there is no exemption as contemplated by section 4(6) of HIPA, FOIP will apply to personal

information collected, used and disclosed by the WCB. I will defer until later in this Report consideration of the specific and relevant requirements.

2. Which provisions in *The Health Information Protection Act (HIPA)* apply to WCB?

[22] As already noted, personal health information is excluded from the definition of “*personal information*” for purposes of FOIP.¹²

[23] The definition of “*personal health information*” in HIPA¹³ is as follows:

2 *In this Act:*

...

(m) “***personal health information***” means, with respect to an individual, whether living or deceased:

(i) *information with respect to the physical or mental health of the individual;*

(ii) *information with respect to any health service provided to the individual;*

(iii) *information with respect to the donation by the individual of any body part or any bodily substance of the individual or information derived from the testing or examination of a body part or bodily substance of the individual;*

(iv) *information that is collected:*

(A) *in the course of providing health services to the individual;*
or

(B) *incidentally to the provision of health services to the individual; or*

(v) *registration information;*

[24] I have observed before that it is curious that all “*government institutions*” for purposes of FOIP are also designated as “*trustees*” for purposes of HIPA¹⁴. I say this since HIPA was clearly designed to reinforce and build on the well established culture of

¹² FOIP, s. 24(1.1)

¹³ HIPA, s.2(m)

¹⁴ HIPA, s. 2(t)(i)

confidentiality that characterizes health professionals in Saskatchewan.¹⁵ This is evident in such provisions as section 27(3)(b) and 27(4)(e)(ii)(B) of HIPA. At the same time, all government institutions were already fully subject to the requirements of FOIP. Nonetheless, the Legislative Assembly has expressly imposed this set of additional obligations in HIPA on those government institutions. It is the responsibility of each government institution, including WCB, to take all of the steps required by HIPA to achieve full statutory compliance. HIPA has been in force since September 1, 2003.

[25] Not all of HIPA applies to personal health information in the custody or control of WCB. Section 4 provides as follows:

4(1) Subject to subsections (3) to (6), where there is a conflict or inconsistency between this Act and any other Act or regulation with respect to personal health information, this Act prevails.

(2) Subsection (1) applies notwithstanding any provision in the other Act or regulation that states that the provision is to apply notwithstanding any other Act or law.

(3) Except where otherwise provided, The Freedom of Information and Protection of Privacy Act and The Local Authority Freedom of Information and Protection of Privacy Act do not apply to personal health information in the custody or control of a trustee.

(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:

(a) The Adoption Act or The Adoption Act, 1998;

(b) Part VIII of The Automobile Accident Insurance Act;

*(c) **Repealed.** 2006, c.C-1.1, s.26.*

(d) The Child and Family Services Act;

(e) The Mental Health Services Act;

(f) The Public Disclosure Act;

(g) The Public Health Act, 1994;

(g.1) The Vital Statistics Act, 1995 or any former Vital Statistics Act;

(h) The Workers' Compensation Act, 1979;

(h.1) The Youth Drug Detoxification and Stabilization Act; or

¹⁵ "Health organizations with a security-conscious organizational culture, promote the concept that everyone working with personal health information is responsible for its protection." [COACH - Canada's Health Informatics Association, *COACH Guidelines for the Protection of Health Information* (Coach, 2004) at 3.6.2 Overview]

(i) *any prescribed Act or regulation or any prescribed provision of an Act or regulation.*

(5) *Sections 8 and 11 apply to the enactments mentioned in subsection (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.*

[26] Section 4(4) of HIPA provides that personal health information obtained for purposes of the WCA is not subject to:

- Part II (Rights of the Individual),
- Part IV (Limits on Collection, Use and Disclosure of Personal Health Information by Trustees), and
- Part V (Access of Individuals to Personal Health Information) of HIPA.

[27] In the result, personal health information obtained for purposes of the WCA is subject to:

- Part III (Duty of Trustee to Protect Personal Health Information),
- Part VI (Review and Appeal),
- Part VII (Powers of the Commissioner), and
- Part VIII (General).

[28] There is no exemption from FOIP as contemplated by section 4(6). Therefore FOIP will apply to those areas of HIPA addressed by Part II, IV, V of HIPA. As noted earlier, I have jurisdiction under HIPA to address WCB information practices but this is limited to the four Parts of the statute listed in the preceding paragraph.

3. What does the *Overarching Personal Information Privacy Framework for Executive Government* Require of WCB?

[29] In addition to FOIP and HIPA, I will consider a Saskatchewan Government policy adopted September 2003 - *An Overarching Personal Information Privacy Framework for*

*Executive Government (Privacy Framework)*¹⁶. WCB is included in the list of agencies that comprise Appendix A that are subject to the Privacy Framework.

[30] In my *Report on the Overarching Personal Information Privacy Framework (OIPC Privacy Framework Report)*¹⁷, I questioned the value of the instrument and was critical of weaknesses in the instrument and the underlying rationale for the initiative. I suggested that it added little or no value to our existing access and privacy legislation but certainly as I have observed, it has created significant confusion for citizens and government workers alike.

[31] Nonetheless, the Privacy Framework has not been rescinded as of the date of this Report and indeed is still featured prominently in the training materials produced by the Access and Privacy Branch in Saskatchewan Justice.¹⁸ There is no question but that WCB has adopted this policy. This is evident in the written policies and procedures of WCB that I reviewed as part of this investigation. It is therefore appropriate that I consider the extent to which WCB complies with that policy.

[32] In the news release issued on September 11, 2003 to announce that the provincial government had adopted new privacy standards for the development of government policies and practices respecting the protection of personal information, the then Information Technology Minister stated that “*citizens have a right to have their private information protected and government has an obligation to ensure it has safeguards in place to make sure that happens*”. The heading of that same news release states “*Government Upgrades Privacy Practices*”. In announcing that policy, a government document asserted that “*At the same time, the purpose [of the Privacy Framework] is to raise, for individual citizens, the level of protection of their personal information.*”¹⁹

[33] The Privacy Framework includes the following statement:

¹⁶ Saskatchewan Justice, *An Overarching Personal Information Privacy Framework For Executive Government* (hereinafter Privacy Framework), (Government of Saskatchewan, 2003); available at <http://www.gov.sk.ca/news-archive/2003/9/11-648-attachment.pdf>

¹⁷ OIPC, *Report on the Overarching Personal Information Privacy Framework* (hereinafter OIPC Privacy Framework Report), (OIPC, 2004); available at www.oipc.sk.ca under the ‘Resources’ tab

¹⁸ Saskatchewan Justice, *Training Course for Government Employees* (Saskatchewan Justice Access and Privacy Branch, 2007); available at <http://www.saskjustice.gov.sk.ca/foi/default.shtml>

¹⁹ Privacy Framework, at 3

*This Privacy Framework is designed to place Saskatchewan at the strongest possible privacy protection policy position, while balancing the Government's need to meet its public policy obligations.*²⁰

[34] Central to the Privacy Framework is a requirement for each government institution to “designate a departmental or agency Privacy Officer (PO), to ensure organizational compliance with the Privacy Framework.”²¹ In Appendix C to the Privacy Framework the role of Privacy Officer is described as follows:

Role

*The role of the Privacy Officer is to ensure that the **legal framework, the policies, the standards and the procedures for ensuring the protection of personal information** are followed within the department or agency for which the Officer is responsible.*

Responsibilities

Working through the Senior Management and staff of the department or agency, the Privacy Officer will be responsible, in the particular department or agency, for:

- *Ensuring the department or agency operates within the **legal** regime of the Province of Saskatchewan.*
- *Implementing the Overarching Privacy Framework.*
- *Facilitating ongoing education and awareness activities.*
- *Measuring compliance with this Framework.*
- *Continually reviewing the adequacy of this Framework to ensure it meets the privacy needs of the department or agency and the Government of Saskatchewan.*
- *Conducting or organizing internal audits and assessments, and recommending improvements.*
- *General administrative duties to ensure that the mechanisms are in place to support the implementation of the Overarching Privacy Framework.*²²

[Emphasis added]

[35] Parenthetically, it is remarkable that this entire alleged breach of privacy investigation has been undertaken without any input or representations from the official Privacy Officer of WCB.

²⁰ Privacy Framework, at 6

²¹ Privacy Framework, at 22

²² Privacy Framework, at 35

[36] Underlying the Privacy Framework and relevant portions of the policies and procedures of WCB is an assumption that compliance with the Privacy Framework and its general privacy requirements can cleanly be severed from FOIP requirements. The Privacy Framework contemplates that complying with FOIP is somehow different than achieving the goals and standards of the Privacy Framework. In reality all of the components of the Privacy Framework are already dealt with explicitly or implicitly in FOIP²³. Only FOIP has the force of law. Any Government of Saskatchewan ‘privacy policy’ including the Privacy Framework will be subject to and subordinate to FOIP and must be construed accordingly.

[37] The Privacy Framework provides that “*it is important for government to strive to obtain informed written consent where such is reasonably practical.*”²⁴

[38] The Privacy Framework sets out a limiting rule as follows:

*Personal information shall be used or disclosed only for the purposes for which it was collected or for a use consistent with that purpose, except with the consent of the individual or as specifically authorized by law.*²⁵

[39] The Privacy Framework provides as follows:

9. Openness

The privacy principles, and the policies and procedures relating to their implementation should be readily available.

Commentary

The information available should include: (a) the name/title and address of the person who is accountable for the organization’s policies and procedures and to whom complaints or inquiries can be forwarded; (b) the means of gaining access to personal information held by the department or agency; (c) a description of the type of personal information held by the department or agency; (d) a copy of

²³ One exception may be the failure of FOIP to impose a positive duty on government institutions to take reasonable safeguards to protect personal information in their possession or under their control. [OIPC Report on Privacy Framework]

²⁴ Privacy Framework, at 15

²⁵ Privacy Framework, at 16

*any brochures or other information that explain the departments or agency policies and procedures; and (e) what personal information is made available to related organizations or third parties.*²⁶

[40] The above is reinforced by the **Goals, Objectives, Benchmarks and Actions** section of the Privacy Framework²⁷. This includes the following objectives:

Id. Departments and agencies have policies and procedures in place, which protect personal information.

Ie. Department and agency staff is capable and trained in privacy policies and procedures.

*[Benchmarks] By April 1, 2006 all programs that collect personal information will include an explanation of the purpose, use, retention and disclosure of the information.*²⁸

[41] Goal #4 includes the following objective:

4b Individuals are able to challenge the accuracy and completeness [sic] their personal information and have it amended.

[42] The corresponding actions include:

16. Working with their Privacy Officers, Departments and agencies will develop a process for individuals to follow, if they wish to obtain information and/or challenge the information or compliance with this Framework.

4. Has the WCB Met the General Requirements in Section 16 of HIPA?

[43] This is a case of first impression in terms of the application of HIPA to this particular government institution.

[44] One of the most important requirements for WCB is found in section 16 of HIPA²⁹. That provides as follows:

²⁶ Privacy Framework, at 18-19

²⁷ Privacy Framework, at 21-27

²⁸ Privacy Framework, at 24

²⁹ HIPA, s. 16 is in Part III and, therefore, applies to WCB

16 Subject to the regulations, a trustee that has custody or control of personal health information must establish policies and procedures to maintain administrative, technical and physical safeguards that will:

- (a) protect the integrity, accuracy and confidentiality of the information;*
- (b) protect against any reasonably anticipated:*
 - (i) threat or hazard to the security or integrity of the information;*
 - (ii) loss of the information; or*
 - (iii) unauthorized access to or use, disclosure or modification of the information; and*
- (c) otherwise ensure compliance with this Act by its employees.*

[45] Although the detailed provisions governing collection, use and disclosure of personal health information have been specifically excluded from the application of HIPA to WCB, that does not relieve WCB of having policy that addresses “...*the integrity, accuracy and confidentiality of the information*”. It also does not relieve WCB of establishing policies and procedure to prevent unauthorized access to, use or disclosure of the information.

[46] In applying and interpreting section 16 we will be guided by a number of instruments that discuss standards for the integrity, accuracy and confidentiality of personal information and personal health information. This includes the following:

- *Guidelines for the Protection of Health Information* (Canadian Health Informatics (COACH) Standard)
- Findings and Recommendations of our Office of the Saskatchewan Information and Privacy Commissioner
- *Pan-Canadian Personal Health Information Privacy and Confidentiality Framework*³⁰
- *CIHR Best Practices for Protecting Privacy in Health Research*³¹
- Canadian Standards Association *Model Code for the Protection of Personal Information*³²
- Findings, Orders and Recommendations of Information and Privacy Commissioners of Canada, and of other provinces notably, Ontario, Alberta, British Columbia and Manitoba
- the Privacy Framework.

³⁰ Health Canada, *Pan-Canadian Health Information Privacy and Confidentiality Framework* (January 27, 2005); available at http://www.hc-sc.gc.ca/hcs-sss/pubs/ehealth-esante/2005-pancanad-priv/index_e.html

³¹ Canadian Institutes of Health Research, *CIHR Best Practices for Protecting Privacy in Health Research*, (September, 2005); available at <http://www.cihr-irsc.gc.ca/e/29072.html>

³² Canadian Standards Association, *Model Code for the Protection of Personal Information*; available at <http://www.csa.ca/standards/privacy/code/Default.asp?language=English>

[47] Two standards common to these different instruments that are relevant to this investigation are:

- (1) Least amount of identifying information necessary for the purpose
- (2) Collect, use and disclose only on a 'need-to-know' basis

[48] As of this date, there have been no regulations enacted under HIPA that are relevant to the standards required of a health information trustee such as WCB for “*administrative, technical or physical safeguards*”. Our office has concluded in past Reports that section 16 requires that a trustee establish **written** policies and procedures.³³

[49] I have previously determined that in order to discharge its obligation under section 16 of HIPA, any trustee must address three different kinds of safeguards: (1) administrative, (2) technical and (3) physical.³⁴

A. ADMINISTRATIVE SAFEGUARDS

(1) ORGANIZATION

[50] An initial inquiry for our office was to determine the extent to which WCB has dealt with access to information and privacy matters in its formal organizational structure.

[51] We do this by assessing whether WCB has organized itself to deal with its statutory access and privacy responsibilities under the WCA, FOIP, and HIPA.

[52] Overall responsibility for compliance with FOIP is vested in the head of the government institution. The head of WCB is the Chief Executive Officer (CEO).³⁵ Section 60 of FOIP provides as follows:

60(1) A head may delegate to one or more officers of the government institution a power granted to the head or a duty vested in the head.

³³ OIPC, *Review Reports H-2004-001, F-2004-006 and Investigation Reports 2005-001, H-2005-002*; available at www.oipc.sk.ca under 'Reports'

³⁴ OIPC, *Investigation Report H-2005-002*, at 10; available at www.oipc.sk.ca under 'Reports'

³⁵ FOIP, s. 2(1)(e); *The Freedom of Information and Protection of Privacy Regulations*, c. F-22.01, Reg. 1, Appendix, Part I (hereinafter FOIP Regulations), s. 4

(2) *A delegation pursuant to subsection (1):*

(a) is to be in writing; and

(b) may contain any limitations, restrictions, conditions or requirements that the head considers necessary.

[53] WCB Policy Manual provides as follows:

5. Section 60 of The Freedom of Information and Protection of Privacy Act (FOIPP) provides that the head may designate an Access Officer to whom the public must apply in order to access WCB information. Section 2(1)(e)(ii) of the FOIPP Act and Section 4 (c) of the FOIPP Regulations prescribe the chairperson of the WCB as the head, for the purposes of the FOIPP Act.³⁶

[54] The following designation appears in the same Policy Manual:

4. The WCB, through the Chair and under the authority of section 60 of FOIPP, has appointed the board solicitor as access officer and hereby delegates to that solicitor the duties and powers of the head as prescribed in FOIPP Act. Any application submitted in the form prescribed under the FOIPP Act will be forwarded directly to the board solicitor.³⁷

[55] The policy suggests that section 60 of FOIP provides that the head may designate an Access Officer to whom the public must apply in order to access WCB information. In fact, section 60 is not restricted in any way to access to information (Part II of FOIP). That section permits a head to delegate to one or more officers of the government institution a power granted to the head or a duty vested in the head. That would also capture all powers or duties vested by reason of Part IV of FOIP dealing with the protection of privacy. By far the most common view of this type of provision in other Canadian jurisdictions is that both access and privacy responsibilities are delegated to a single senior official.³⁸

³⁶ WCB, *Policy Manual, Section 10.0, Doc 10.6* (WCB, 2003) at 5

³⁷ WCB, *Policy Manual, Section 10.0, Doc 10.6* (WCB, 2003) at 5

³⁸ Government of Alberta, *Alberta Freedom of Information and Protection of Privacy Guidelines and Practices Manual, Chapter 2: Administration of the FOIP Act, 2.1 Public Body – Roles and Responsibilities* (Alberta Government Services Access and Privacy Branch, 2005) at 23; Government of British Columbia, *Train the Trainer Manual, Section 1: Facilitator Resources, The Role of the Facilitator*; available at http://www.mser.gov.bc.ca/privacyaccess/TT_Manual/Sec1_Facilitator.htm#role; Government of Manitoba, *Administration of FIPPA by Local Public Bodies, Daily Administration and Coordination - Guide for Local Public Bodies, Daily Administration and Coordination – Access and Privacy Coordinator*; available at

[56] The Policy Manual includes the following section:

Privacy Officer

6. *For the purpose of this policy and in compliance with the provincial Privacy Framework, the WCB has appointed the Manager of Facilities as its Privacy Officer.*
7. *Reporting to the Chief Privacy Officer of Executive Government, the Privacy Officer will coordinate and ensure implementation of the legal framework, policies, standards and procedures governing the protection of personal information as specified in the provincial Privacy Framework and other applicable privacy legislation. He will also be the primary contact with the Archives Board, ensuring the classification and appropriate disposition of all board records.*
8. *The board solicitor in accordance with POL 06/2005 - Access, Collection and Release of Information, is the WCB's Access Officer responsible for the protection of personal information under The Freedom of Information and Protection of Privacy Act (FOIPP). Distinct from the role of the Privacy Officer, the Access Officer will continue to receive and respond to inquiries regarding the access, collection and release of WCB information as it relates to FOIPP.³⁹*

[57] Paragraph 7 of the above, purports to assign to the Privacy Officer responsibility to “*coordinate and ensure implementation of the legal framework,...governing the protection of personal information...*”.

[58] The legal framework for privacy is primarily represented by FOIP which is identified as such in the Privacy Framework.

[59] The reference to “*as specified in the provincial Privacy Framework and **other applicable privacy legislation***” is problematic. [Emphasis added] The Privacy Framework is policy and not legislation.

<http://www.gov.mb.ca/chc/fippa/manuals/guide/intro.html#i21>; Government of Ontario, *The Manual (Access & Privacy), Chapter 2: Administration of the Act, Freedom of Information and Privacy Coordinator*; available at <http://www.accessandprivacy.gov.on.ca/english/manual/CHAPTER2.htm#coordinator>

³⁹ WCB, *Policy Manual, Section 10.0, Doc 10.7* (WCB, 2005) at 12

[60] The effect of paragraph 7 is to create almost a complete duplication of the role of the Access Officer. This conclusion is based on the description in the policy manual of the Access Officer's responsibility:

...the WCB's Access Officer responsible for the protection of personal information under The Freedom of Information and Protection of Privacy Act (FOIP).

[61] Furthermore the Saskatchewan Government Privacy website listed the Access Officer by name as the Privacy Officer for purposes of the Privacy Framework.⁴⁰

[62] If a claimant has a privacy complaint and they call or write the WCB asking for the Privacy Officer they will be connected with someone who has no responsibility for FOIP compliance. This is so notwithstanding that Part IV of FOIP is the governing law on the collection, use and disclosure of personal information by WCB. That claimant will need to be referred by the Privacy Officer to the Access Officer.

[63] Many privacy complaints, when initially raised with a government institution, are really requests for access to their personal information or personal health information or requests for correction. That means that the claimant, who wants access to their personal information but frames the question as a privacy question, will likely be referred to the Privacy Officer. The Privacy Officer will presumably, upon discovering that this is really an access request, refer the claimant to the Access Officer.

[64] The prospect of two different internal investigations, one led by the Privacy Officer and another lead by the Access Officer suggests, at least from a complainant's perspective, increased complexity and increased delay.

[65] If our office, which oversees both access to information (Part II and III of FOIP) and privacy (Part IV) wishes to discuss a complaint that involves both a request for access and also a breach of say the transparency requirement in the Privacy Framework we must

⁴⁰ Government of Saskatchewan, *Privacy Officer Contact Information* (Government of Saskatchewan, 2005); available at http://www.privacy.gov.sk.ca/contact_info.html, accessed on March 27th, 2007

have one discussion with the Access Officer and then initiate a separate discussion with the Privacy Officer.

[66] Our preference when we receive privacy complaints is to inquire whether the complainant has attempted to resolve the complaint by dealing with the FOIP Coordinator in the government institution. If we are satisfied that there is a properly trained FOIP Coordinator who is equipped and prepared to deal with the complaint efficiently and appropriately, we invariably ask the complainant to first follow up with that FOIP Coordinator. If the individual cannot resolve their problem by dealing with the FOIP Coordinator then we will undertake a review or investigation. We are reluctant to follow that course of action if we are likely to subject the complainant to an inefficient and confusing structure that may lead to more frustration and delay.

[67] In addition, I understand that the Access and Privacy Branch of Saskatchewan Justice recommends integrating both FOIP access and privacy and HIPA responsibilities in a single office within the organization.⁴¹ This is sound advice. It makes little sense to fragment access to information responsibilities and privacy responsibilities. Indeed, the most common privacy aspect that challenges public sector organizations is the request by individuals for access to their personal information.

[68] We have also commented on the value of a single integrated office to manage access and privacy in our June 2004 OIPC Report on the Privacy Framework⁴², three Annual Reports⁴³ and several issues of the Saskatchewan FOIP FOLIO.⁴⁴

[69] As FOIP has dual themes, public information must be accessible and personal information must be protected and as other provinces have found an integrated access and privacy officer to be an effective and appropriate model in properly addressing both themes, it is, in our assessment, appropriate for WCB to do so also.

⁴¹ Saskatchewan Justice Access and Privacy Branch, *Access and Privacy Training Session for FOIP Coordinators* (Regina: Saskatchewan Justice, March 1, 2007)

⁴² OIPC Privacy Framework Report, Recommendations #9 and #10 and at 39

⁴³ OIPC, *Annual Report 2003-2004*, at 11; *Annual Report 2004-2005*, at 22; *Annual Report 2005-2006*, at 16; available at www.oipc.sk.ca under 'Annual Reports'

⁴⁴ OIPC, *Saskatchewan FOIP FOLIO* (January, 2006) at 3; (January, 2004), at 3

[70] The policies and procedure documents discussed earlier refer to these positions as separate positions. Complicating this situation is the relatively narrow way the duties of the Privacy Officer have been described in WCB materials. Those narrow duties bear almost no correspondence with the description that appears in the Privacy Framework document.

[71] Given the volume of personal health information and personal information for which WCB is responsible, it would be very timely for WCB to consider creating a single office responsible for access to information and protection of privacy responsibilities. The responsibilities of the Privacy Officer could conveniently be rolled into the same job description. If WCB accepts my recommendations for other changes in its policy and procedures, it will entail more work than can likely be accommodated on a part time basis by the WCB Solicitor. This consolidation of responsibilities would clearly align with access and privacy best practices as well as the fashion in which the “access and privacy file” is handled by WCB in other western Canadian provinces.⁴⁵ Consolidating HIPA and FOIP access to information and privacy responsibilities in a single office within WCB enables the development of excellent skills and resources to simplify statutory compliance. It would provide a single point of contact for claimants, employers and third parties seeking disclosure of certain personal information or personal health information. It would also benefit WCB staff for the same reasons.

(2) POLICIES AND PROCEDURES

[72] In response to our request for copies of all relevant policies and procedures, WCB provided the following excerpts from its policy manual and its procedure manual as well as certain training materials for WCB staff. This includes the following:

(a) WCB Policy Manual

10.6 Access/Collection/Release of Information (POL 12/2003)

10.7 Storage, Archiving & Destruction of Information (POL 03/2005)

⁴⁵ Alberta Freedom of Information and Protection of Privacy Guidelines and Practices, 2005 p.22; Directors & Managers of Freedom of Information and Privacy (BC) available on line at http://www.mser.gov.bc.ca/privacyaccess/contacts/dmip_list.htm#ministries; Manitoba Chapter 2 – Administration of FIPPA (Manuals & FAQs for Public Bodies) available on line at <http://www.gov.mb.ca/chc/Fippa/manuals/resourcemanual/chapter2.html#Access>

- (b) **WCB Procedure Manual**
- (c) **Acknowledgement of Confidentiality**
- (d) **10.2 Board Policy Directives (POL 03/94)**
- (e) **WCB Staff Training Materials**
 - (1) **Enhanced Security Claims**
 - (2) **Confidentiality at WCB**
 - (3) **Anonymity/Third Party Information**
 - (4) **Release of Information**
 - (5) **Sending a Letter (Smartmaster Documents)**

[73] A number of these documents warrant comment.

(a) WCB POLICY MANUAL

10.6 Access/Collection/Release of Information (POL 12/2003)

[74] The date of this document is November 5, 2003. The stated purpose is to “*provide guidelines for staff concerning the access, collection and release of WCB information*”. It makes no mention of limiting the collection, use and disclosure of personal information or personal health information beyond a very general confidentiality clause as follows:

1. *The WCB is committed to assuring the public trust in all matters concerned with the administration of the Act. This includes implementing appropriate safeguards to regulate and protect the confidentiality of information collected by staff in the course of their duties or in the release of information to third parties.*
2. *Subject to the provisions of the following policy, WCB staff will be bound by a signed confidentiality agreement that prohibits them from releasing any information gathered in the course of their duties, unless expressly authorized to do so.*
3. *Third parties to whom the WCB may disclose information will be required to treat the information in accordance with a confidentiality agreement.*

[75] Although the policy went into force just two months after HIPA was proclaimed, the policy makes no reference to HIPA or any requirements of HIPA.

[76] The policy includes a definition of “*file information*” that has no correspondence to the definition of personal information in FOIP or the definition of personal health information in HIPA. File information, according to the WCB, means “*information that*

would be routinely collected and included on an individual's file during the normal course of business and that may be released to a worker, a worker's representative or an employer. File information does not include legal opinions, comments or advice concerning specific courses of action recommended by the board solicitor; nor does it include an investigator's working papers or notes."⁴⁶

[77] Clause 6 of this policy provides that WCB "may enter into mutual information sharing agreements that are advantageous to the WCB, claimants, the requesting WCB departments, and outside agencies."⁴⁷

[78] The Board Solicitor is appointed as "Access Officer" and has delegated to that position "the duties and powers of the head as prescribed in FOIPP Act." That appointment is followed by the statement: "Any application submitted in the form prescribed under the FOIPP Act will be forwarded directly to the board solicitor." [page 5]

[79] Collection of information is addressed as follows:

5. *Information collected in the course of determining or investigating a claim or any other matter arising from the Act will be limited to that information related to and required to make a decision on that matter.*
6. *Information collected by WCB investigators or officers authorized to conduct inquiries will not be divulged other than in the normal course of their duties, or under authority of the WCB. [page 5]*

[80] On page 6 of this Policy, the section, *Third Party Release of Information* is problematic since it appears to conflate **access** by a claimant to his or her own personal information with **disclosure** to a third party.

[81] Access, in the context of privacy best practices, is viewed as a fundamental right of the individual that will be subject to narrowly defined exceptions. Normally, access means the data subject will be able to view all of the information pertaining to that individual in the possession or under the control of the government institution. The reason why access

⁴⁶ WCB, *Policy Manual, Section 10.0, Doc 10.6* (WCB, 2003) at 4

⁴⁷ WCB, *Policy Manual, Section 10.0, Doc 10.6* (WCB, 2003) at 5

is sought is irrelevant. Access is not given conditionally or qualified by such things as the purpose for the request, undertakings as to what use the information may be put to, or indemnification or release of claim against the government institution.

[82] Disclosure, on the other hand, is occasionally mandatory, but most often is a discretion for the government institution to exercise dependent on the particular circumstances. It is subject to the requirement to disclose the least amount of identifying information necessary for the purpose. Conditions are routinely imposed on what use or disclosure may occur with that information. The rule of need-to-know applies. In other words, information shared as a disclosure to a third party should only be disclosed to someone who has a legitimate need-to-know that information.

[83] Pursuant to Section 171.1(2) of the WCA, medical reports considered harmful to the worker or any other person will not be sent directly to the worker. This information will be forwarded to the attending physician with a covering letter of explanation. When staff members are unsure, the advice of Medical Services internal to WCB is to be sought.

[84] The section “*Exchange of Information*” permits WCB to enter into a Memorandum of Understanding (MOU) with government agencies or organizations for the regular exchange of information. This may include “*any other organization deemed appropriate or mutually beneficial to the agency and the WCB*”. [page 7]

16. Although individual agreements will vary on specific terms, all third parties will be bound by a confidentiality clause regarding the use and storage of information requested, stating:

- a. Information is to be used only for the purpose requested.*
- b. Information is to be used only by the parties to the agreement, except where subsequent disclosure is specifically permitted by the WCB (e.g. as evidence.)*
- c. Information will be afforded adequate and appropriate security.*

10.7 Storage, Archiving & Destruction of Information (POL 03/2005)

[85] The purpose is “[t]o provide guidelines for staff concerning the storage, archiving and destruction of information”. This policy is dated September 20, 2005.

[86] This defines “Administrative records”, “Board Records” and “Operational Records” none of which correspond to the definitions of personal information in FOIP or personal health information in HIPA.

[87] This specifically states that “*The Workers’ Compensation Board (WCB) is subject to the provisions of the provincial government Privacy Framework, which outlines 11 overarching privacy principles governing all provincial government departments, boards, commissions, crown corporations and other bodies.*” [page 10]

[88] The emphasis on the Privacy Framework is confusing since the applicable legislation is FOIP.

[89] HIPA is recognized in this document as follows:

4. *Sections 16 and 17 of The Health Information Protection Act (HIPA) require the WCB to establish policies and procedures related to the protection, retention and destruction of personal information.* [As noted earlier this is an inaccurate representation of section 16 which covers all privacy activities.]
5. *Section 18 of HIPA requires WCB to enter into agreements with information management service providers (as defined in HIPA) to whom it provides personal health information for storage and prescribes the terms that must be included in such agreements.*

[90] General elements of Policy 10.7 include the following:

2. *Records disposal (storage, archiving or destruction) will be carried out in a time and manner consistent with HIPA and The Archives Act.*

[91] In addition to duties previously described for the Privacy Officer there are also certain responsibilities in conjunction with the Archives Board in terms of the selection of “*non-current documents of historical interest for transfer to the Archives.*” [page 12]

[92] There are appropriate requirements for off-site storage of records not required on a regular basis. [page 13]

[93] There is appropriate provision for destruction of records “*under controlled conditions and in a manner that protects the privacy of individual clients and the WCB*”. I assume this refers to protection of the corporate interests of WCB. Organizations do not, however, have a ‘right of privacy’.

[94] This Policy references section 16, 17 and 18 of HIPA and then “*FOIPP*” generally.

(b) WCB PROCEDURE MANUAL

10.1 Third Party Access to File Information (PRO 24/95)(Amended by 60/2000)

[95] In this procedure document “*file information*” is defined somewhat differently than in the
10.6 Access to Information Policy

“File information” is defined as any document that would routinely and/or regularly be included in the file of a claimant during the normal course of business. Legal opinions or advice concerning specific courses of action by the Board Solicitor to any member of staff, management, or Board Members do not form part of a file, and under no circumstances are they to be divulged or exposed to any parties outside the Board.

[96] As noted earlier, this definition does not correspond to the definition of personal information in FOIP or personal health information in HIPA. This is likely to lead to confusion in terms of WCB staff developing a clear understanding of what HIPA and FOIP require.

[97] The procedure document requires that any inquiries under FOIP will be forwarded immediately to the Board’s Solicitor. It is unclear whether this includes all breach-of-privacy complaints or formal access requests or both.

[98] The procedure document makes no reference to HIPA but does cite sections 28 and 29(2) of FOIP. Our definition of “*use*” is the application of personal information or personal health information by and within a single organization or at least within the control of

that organization.⁴⁸ If personal information or personal health information is transferred to another organization, that transaction would constitute a disclosure. Section 28 deals exclusively with use of personal information and would seem to be out of place in PRO 24/95.

[99] The point that needs to be made is that records subject to FOIP may still be accessible under FOIP regardless of restricted definitions such as file information developed as a matter of policy. The WCB, as a government institution, needs to conform to the requirements of FOIP including the much broader definition of **record**⁴⁹ and of **personal information**. Utilizing different definitions in its policies and procedures will undoubtedly lead to confusion among WCB staff and claimants.

10.2 Claims Files-Access Requests (PRO 06/95) (Amended by 60/2000)

[100] This May 1, 1996 procedure document refers to section 171.1 to 171.2 of the WCA but makes no reference to either HIPA or FOIP.

[101] The stated purpose is “[t]o Establish Operations Departmental Procedures For File Access Requests Received From Workers, Worker Representatives Or Employers.”

[102] In reviewing this procedure document I am mindful that one of the most important elements of any privacy regime is the right of the data subject to be able to request access to his or her personal information and personal health information and to request that errors be corrected.⁵⁰

[103] I note that the existing practice of WCB is to only provide access to complainants when they have initiated an appeal. This however effectively denies access to many more complainants. In 2005, although there were 39,904 claims to WCB, there were only 1,149 appeals. The net effect is that 2.8% of claimants could access their own personal information and personal health information. That also means that 97.2% of claimants may be denied access to their personal or personal health information. This is subject to

⁴⁸ OIPC, *Annual Report 2005-2006*, at 61, available at www.oipc.sk.ca under ‘Annual Reports’

⁴⁹ FOIP, s. 2(1)(i)

⁵⁰ FOIP, ss. 31, 32

advice from the WCB Solicitor that there is also disclosure, at the request of the claimant or perhaps by operation of law or information sharing agreements, to organizations involved with residential school claims, to private or third party insurers or Saskatchewan Government Insurance or federal government departments such as Service Canada.

[104] I note that other western Canadian provinces⁵¹ do not limit access in such a heavy-handed fashion.

[105] Procedure 1.e. provides as follows:

Any medical reports that may be harmful to the worker or any other person will not be sent pursuant to Section 171.1(2) of the Act. This information will be copied and sent to the attending physician with an accompanying letter of explanation. The worker or dependent will be advised that the information is available with his/her attending physician.

[106] Procedure 1.e. sets up a different test than section 21 of FOIP. The latter provides that “A head may refuse to give access to a record if the disclosure could threaten the safety or the physical or mental health of an individual”.

[107] We have commented in the past that the threat to safety or health should be capable of a reasonable expectation of harm and that harm must be causally connected with the possible access to the information.⁵² This is to be read in conjunction with section 8.

8 Where a record contains information to which an applicant is refused access, the head shall give access to as much of the record as can reasonably be severed without disclosing the information to which the applicant is refused access.

[108] There is nothing in the procedure document that makes reference to severing certain parts and providing the balance of the document to the claimant which is a requirement of section 8 of FOIP. Severing requires a line-by-line analysis of the record.

[109] In the same procedure document there is a process when a claimant objects to the release of claim documents to the employer. This is described as follows:

⁵¹ BC WCA, AB WCA, Man WCA

⁵² OIPC, *Saskatchewan FOIP FOLIO* (February, 2007) at 4; available online at www.oipc.sk.ca under ‘Newsletters’ tab

3. *Employer's Requests:*

a. *The Employer must submit a correctly completed "Employer's Request for Photocopy of Relevant Records in File(s)", with the issue in dispute clearly identified and capable of being appealed.*

...

e. *The selected copies are sent to the worker, or if deceased, to the surviving dependant (or their duly authorized representative), along with a letter asking them to notify the Board if they object to any of the proposed release of information. The period they are given to make any such objections under section 171.2(2) is 21 days from the date of the letter.*

f. *Any objections raised by the worker, dependant or their representative must be related to specific documents and be provided in writing with reasons given.*

g. *Per section 171.2(3) and (4), upon the expiry of the 21 days allowed in 3.e., any objections will be considered and a final selection of relevant documents will be made. Regardless of whether objections are made, the final selection will be sent to the worker, dependant or their representative by registered mail, along with notice that they have a further 21 days to request a reconsideration of the final selections.*

[110] The above policies represent a genuine effort to protect the privacy of claimants. By compliance, a measure of privacy protection is afforded claimants.

[111] It should be noted however that the foregoing procedure was not engaged in the file in question. This is presumably because instead of dealing with a decision to send all or part of a claim file to this Employer, there was a more or less continuous flow to the Employer of copies of most communications between the Case Manager and this Complainant.

[112] The foregoing safeguards were effectively short-circuited by the apparent practice of routine sharing of copies of correspondence intended for the claimant with the claimant's Employer, as evidenced by this complaint file.

10.4 Storage, Archiving & Destruction of Information (PRO 03/2005)

- [113] This procedure document is dated September 27, 2005 and is for the purpose of detailing *“the procedure for the storage, archiving and destruction of Board information.”*
- [114] The Privacy Officer is to be the primary contact with the Archives Board in implementation of *The Archives Act*⁵³ requirements.
- [115] The Privacy Officer is responsible for the appointment of a Records Manager by each director, manager and other department head. The Privacy Officer also has responsibility to oversee disposal of records and to coordinate training and support.
- [116] There is no apparent explanation for having off-site storage, archiving and destruction from overall responsibility for FOIP compliance. For such purposes as responding to access requests, responding to breach of privacy complaints and ensuring no inappropriate disclosures of personal information or personal health information, it would be beneficial to integrate these responsibilities with all other FOIP responsibilities.
- [117] Interestingly, none of the written policies and procedures produced by WCB discuss the relationship between the Privacy Officer and the Access Officer. The policy and procedure documents do not require any particular linkage between the two offices or roles.
- [118] This procedure document references FOIP and HIPA (sections 16, 17 and 18).

10.5 Release of Data (PRO 32/95)

- [119] The stated purpose is *“[t]o authorize release of selected data to the Department of Labour and Industrial Safety Associations.”* The confusion is due to two bullets in the background portion of the document. The bullets in question are:

4. *A recent opinion by the WCB’s solicitor suggests that the release of such information could be supported by Sections 22 and 117 of the Act without offending Section 171(1) or the privacy of individual claimants or employers.*

⁵³ *The Archives Act, 2004*, S.S. 2004, c. A-26.1

5. *The opinion further indicates that the release of such information would be allowed under Section 29 of [FOIP].*

[120] The first issue is that incorporated bodies do not have privacy. This is a concept uniquely tied to individuals. Corporations may have certain rights and interests in respect of confidentiality and trade-secret type data, but that is a different concept than privacy.

[121] Section 29 of FOIP relates only to personal information of individuals. It does not deal with the information about organizations.

[122] The second issue is whether information engaged in the practices of WCB under this procedure qualifies as personal information, i.e. information about an identifiable individual. Alternatively, it may be truly anonymous information that does not identify any individual.

[123] In the procedure portion of the document I note the following statement:

2. *The specific nature of the information to be released will cover industry and individual employer claim activity, **but not individual claimants**. It will include a number of injuries, type of injuries, frequency of those injuries, duration, and relative trends.*

[Emphasis added]

[124] If that statement is accurate, there are two questions to answer: (1) Is this de-identified personal health information within the meaning of section 2 of HIPA? and (2) Is this de-identified information within the meaning of section 27 of FOIP?

[125] There is some confusion in this document dated October 31, 1995 over precisely what kind of information is being released. In other words, does this policy, in theory or in practice, contemplate the sharing of personal information (or personal health information) or the sharing of truly anonymous information that does not identify any given individual.

[126] In this regard, HIPA assists with a definition of de-identified personal health information as follows:

3...

(2) *This Act does not apply to:*

(a) statistical information or de-identified personal health information that cannot reasonably be expected, either by itself or when combined with other information available to the person who receives it, to enable the subject individuals to be identified;...

[127] In terms of FOIP, the definition of personal information means “***“personal information”*** ***about an identifiable individual*** that is recorded in any form, and includes:...”

[Emphasis added]

[128] If the information in question is de-identified so that it no longer qualifies as either personal information or personal health information then FOIP and/or HIPA would not apply to that information. Based on the materials provided to us, we are unable to determine if this is the case.

[129] Finally, our office has simply not had the resources to physically monitor the actual kinds of disclosures that are occurring on a day to day basis within WCB. Our analysis is based on what appears in the policy and procedures described herein and representations that have been made by WCB.

(c) **WCB STAFF TRAINING MATERIALS**

[130] WCB has also provided five different documents intended for WCB staff:

1) **Enhanced Security Claims**

*Certain types of claims require special measures in relation to confidentiality. As outlined in How We Provide Our Service (**Confidentiality at WCB**) we should always be conscious of protecting the privacy of our clients. For claims involving our staff members, the friends or relatives of staff, and politically high profile cases, confidentiality issues extend beyond the safe guarding of sensitive financial, health, and treatment information. For these types of claims we must also be concerned about the extent of internal access to the information contained on the claim file.*

From a number of perspectives, it would not be appropriate for you to view documentation on a claim for one of your relatives. In addition to privacy issues, from a public perception point of view this would raise concerns about a conflict of interest.

If one of your co-worker's submitted a claim for an injury sustained at work they would understandably be concerned if there was unlimited access to information on their file. As an example, they would not want details of their medical history to become the subject of office gossip.

The last group of enhanced security claims includes files with a special political sensitivity. This group could include claims for someone with a high media profile or government officials. If information on these claims were made public, and particularly if the information was taken out of context, this could have a wide reaching political impact.

Claims like the ones we've described are assigned a special designation. Once identified as a "Sensitive" file, access is tracked in a monthly report reviewed by the Manager of Administrative Support. The Manager ensures only those with a bona fide business reason access the sensitive claims. Any suspected breaches of confidentiality are brought to the attention of the Director of Human Resources for investigation.

[131] This document is troubling. I accept that employees of WCB require special protection measures to minimize the risk of WCB management using employee claimant file information for inappropriate employment purposes. The notion however that those with a "high media profile" or "government officials" warrant some different or heightened protection than any other claimants is offensive. The appropriate approach would be to recognize that WCB has a great deal of sensitive personal information including health and financial information. I view this type of information as high on the prejudice or sensitivity scale. The WCB response should be to work harder to adequately protect the information of every claimant regardless of their job, industry or employer. In other words, WCB should ensure that **all** claimants enjoy the same measure of protection.

2) Confidentiality at WCB

[132] This piece has two pages of general confidential commentary and then focuses on claims by co-workers. There is an admonition against sharing your user name and password with others. Also, there is a direction to staff to minimize their CICS screen or log out when they are leaving their work area. These may be appropriate security instructions for

staff in so far as they go but barely begin to address privacy and confidentiality in comprehensive fashion.

3) Anonymity/Third Party Information

[133] This information piece appears to be focused exclusively on tips received from “*an external source*” indicating that an injured worker may be involved in an inappropriate activity while in receipt of benefits. This includes a caution that “[t]he *external source should be made aware of the possibility of the worker or employer obtaining a copy of the claim file (Access to Information-Sections 171.1 and 171.2).*” There is an appropriate caution: “*While obtaining information from an third party, it’s important that you DO NOT indicate whether or not the person they are reporting has a claim with the WCB. This information is confidential.*”

[134] For any government institution to collect personal information indirectly there must be compliance with section 26 of FOIP. I do not see the elements and requirements of that provision addressed in this document or in any of the policies and procedures of WCB.

[135] Also, there is little focus on determining whether the information when collected and subsequently used or disclosed is accurate. What is curious is that employees are instructed to “[d]etermine if the information you’ve been provided with should be investigated”⁵⁴ but there is no advice or direction as to what happens to this information if the information cannot be verified or corroborated. Incorrect personal information or personal health information should be purged unless there is a legitimate reason to maintain it.

[136] Section 27 of FOIP provides as follows:

27 A government institution shall ensure that personal information being used by the government institution for an administrative purpose is as accurate and complete as is reasonably possible.

[137] The HIPA counterpart is as follows:

⁵⁴ WCB, *Training Manual, Anonymity/Third Party Information* (WCB, 2006) at 2

19 In collecting personal health information, a trustee must take reasonable steps to ensure that the information is accurate and complete.

[138] WCB's Solicitor has asserted that in the work of WCB there is an important need to obtain and check personal information and personal health information to ensure it is accurate. He advises that the accuracy is often based on information obtained from sources other than the claimant.

[139] My view is that there will certainly be serious and legitimate questions about what weight WCB will assign to certain information collected directly from the claimant but one of the best ways of gathering accurate information is to ask the individual.

[140] One of the most important ways to ensure information retained by WCB is accurate would be to allow any claimant access to his or her file information. By denying access to the majority of claimants, WCB has foreclosed for those claimants this primary check on accuracy.

[141] Clause 4.3 of the Government of Saskatchewan Privacy Protection Checklist⁵⁵ includes the following:

4.3 Does the department or agency have available for citizens written policy and procedures explaining the processes for citizens to challenge the accuracy of their personal information? Do these policies also make clear the processes for verifying and correcting errors?⁵⁶

[142] The simple answer to these appropriate questions is that the policy of WCB prevents the majority of WCB claimants from being able to access their file to assess whether or not the personal information and personal health information is accurate. That policy restricts the right of access to only the relatively small number of persons who appeal. For those few who can access their WCB file, there is no clear procedure to correct errors.

4) Release of Information

⁵⁵ Government of Saskatchewan, *Privacy Protection Checklist*, (Government of Saskatchewan, 2005); available at http://www.privacy.gov.sk.ca/pdfs/privacy_checklist.pdf

⁵⁶ Privacy Framework, at 37

[143] This document is problematic in a number of respects. *The Injured Worker's Request for Photocopy of File(s)* (WROI) indicates the person "receiving the file copy can only use the information for the purposes of that reconsideration or review."⁵⁷ The form also asks the claimant to identify the disputable issue.

[144] Why the limitation on what a claimant can do with his or her file? This is wholly inconsistent with the right of access that any citizen may have to his or her information in the possession or control of any other public body in Saskatchewan. In all other cases under FOIP or HIPA the individual's right of access is not so restricted. The motivation for an access request is irrelevant in all of those other access situations and there is no such limitation on what can be done with the individual's own personal information or personal health information once received by the claimant. As previously noted, for those for who can access their WCB file there is no clear procedure to correct errors in WCB records.

[145] Another curious feature is the section dealing with the Worker's Advocates Office (WAO) that provides as follows:

In order to effectively represent the interests of the injured workers, the Worker's Advocates need full access to file information. We have entered into an agreement that allows their office access to our CICS system. We can freely exchange information with a Worker's Advocate without the formality of obtaining a release from the worker. Their access also includes documentation contained in our Policy and Procedure manuals.

[146] I understand that this would be a disclosure since the WAO are part of Saskatchewan Labour and thus external to WCB.⁵⁸

[147] I am concerned with a process whereby the Worker's Advocate gets "full access" at the same time the majority of WCB claimants are denied access to their records unless they appeal. This is inconsistent with modern notions of privacy and access, rights that have

⁵⁷ WCB, *Training Manual, Release of Information, Section 171.1 Workers' Compensation Act* (WCB, 2006) at 1

⁵⁸ Saskatchewan Labour, Worker's Advocates, available at <http://www.labour.gov.sk.ca/advocate/INDEX.HTM>

been described by the Supreme Court of Canada as special, ‘quasi-constitutional’ rights⁵⁹. This also appears inconsistent with the Privacy Framework⁶⁰.

[148] In fairness to WCB, I understand that there is an audit feature in WCB’s computer system that enables WCB to monitor which claimant electronic files have been accessed by anybody within the WAO. There is however no active monitoring of the audit information and no WCB employee is specifically mandated to carry out that audit function.

[149] Again, there are references to whether the documentation includes “*sensitive information*”. Since almost all of the material in a WCB claim file includes either or both personal health information or personal financial information, it would make more sense to characterize all or most WCB information as sensitive information and protect it by safeguards accordingly.

[150] The document includes the following:

If the worker, or the worker’s representative, has objections they must specifically identify the documents they object to being released along with the basis for their objection. When considering if there are documents that can be excluded from what we send to the employer you should keep in mind the provisions of Section 171.2. This section of our Act indicates the employer is only entitled to access the information the Board used to make its decision with respect to:

(a) *the facts of the situation in which the injury occurred; or*

⁵⁹ See *Nautical Data International Inc. v. Canada (Minister of Fisheries and Oceans)*, 2005 FC 407 at para.8; *Canada (Attorney General) v. Canada (Information Commissioner)*, [2004] 4 F.C.R. 181 at para. 20, 255 F.T.R. 56, 15 Admin. L.R. (4th) 58, 32, C.P.R. (4th) 464, 117 C.P.R. (2d) 85, 2004 FC 431, rev’d (2005), 253 D.R.R. (4th) 590, 335 N.R. 8, 40 C.P.R. (4th) 97, 2005 FCA 199, leave to appeal to S.C.C. requested; *Canada (Attorney General) v. Canada (Information Commissioner)*, [2002] 3 F.C. 630 at para. 20, 216 F.T.R. 247, 41 Admin. L.R. (3d) 237, 2002 FCT 128, 2430901; *Canada Inc. v. Canada (Minister of Industry)*, [2002] 1 F.C. 421 at para. 102, (2001), 282 N.R. 284, 45 Admin L.R. (3d) 182, (2001) 14 C.P.R. (4th) 449, 2001 FCA 254, leave to appeal to S.C.C. refused, [2001] S.C.C.A. No 537 (Q.L.); *Lavigne v. Canada (Office of the Commissioner of Official Languages)*, [2002] 2 S.C.R. 773, (2002) SCC 53 at para 25; *R. v. Dymont*, [1988] 2 S.C.R. 417; *R. v. Mills*, [1999] 3 S.C.R. 668; *Dagg v. Canada (Minister of Finance)*, [1997] 2 S.C.R. 402; *R. v. Plant*, [1993] 3 S.C.R. 281; *R. v. Duarte*, [1990] 1 S.C.R. 30; *R. v. Edward*, [1996] 1 S.C.R. 128; *Canada (Information Commissioner) v. Canada (Commissioner of the Royal Canadian Mounted Police)*, [2003] 1 S.C.R. 66, 2003 SCC 8.

⁶⁰ Privacy Framework, at 19

(b) *the percentage of the cost of compensation which has been assigned by the Board to the injury cost record of that employer with respect to the injury the worker suffered out of and in the course of his employment.*

So what does that mean? If a document or a portion of a document contains sensitive or personal information that has no bearing on the disputable issue it can be excluded from the package of information sent to the employer. On the other hand, and despite the worker's objections, if the information has relevance to the disputable issue the employer is entitled to access.

Once the worker's objections have been reviewed, and you have determined the content of the information package that will be sent to the employer, confirmation of the information that will be granted to the employer will be sent to the worker via registered mail. The worker, or their representative, then has a further 21 days to request reconsideration. If no additional objections are raised the employer can be sent photocopies of the relevant records once the 21 day period has elapsed.

Any subsequent request for reconsideration is dealt with, and responded to, by the Team Leader/CES Supervisor. After a review of the objections put forward, the Team Leader/[Claims Entitlement Specialist] Supervisor will provide the worker with a decision on whether any additional documents will be excluded from the package sent to the employer. At the same time as this decision is conveyed to the worker, the information considered relevant to the disputable issue (as determined by the Team Leader/CES Supervisor) will be mailed to the employer.⁶¹

[151] The same *Release of Information* document ends with the following:

Questions About Information Disclosure

It is virtually impossible to write policy and procedure that will cover all of the situations you will come across. Where there is any concern, staff should seek the advice of their Supervisor, Team Leader, Manager or Director respectively. If additional clarification is required, [WCB Solicitor] can be consulted. As called for by the FOIPP Act, the Board has designated [WCB Solicitor] as our Access Officer.

5) Sending a Letter (Smartmaster Documents)

[152] This document discusses the process to identify the appropriate form letter to use when corresponding to a worker, employer or caregiver. Of relevance to this investigation is the following statement:

⁶¹ WCB, *Training Manual, Release of Information, Section 171.1 Workers' Compensation Act* (WCB, 2006) at 1

1. *From the DCLD screen, press [key instructions] to print the screen. The DCLD screen will print at the top of the page, and on the bottom you will record the following:*

...

- ***When to copy the employer.** Employers should not be cc'd on claims where the explanation of a decision (negative or positive) includes personal or non-work related information. Primarily this will be stress claims, or claims that have a psychological component to them. In those cases, a separate letter should be sent to the employer, without disclosing personal non work-related information, or specific details. **Note:** When doing a separate letter to the employer, DO copy the worker but do NOT include others (ie, caregiver names, etc.)*

[153] This quoted passage is good as far as it goes. It is however framed too narrowly. It fails to alert the WCB employee to the need to deny to the employer all personal information/personal health information beyond the very limited information to which they are entitled.

(3) TRANSPARENCY

[154] This is an explicit requirement in HIPA⁶². Transparency is certainly a best practice for privacy compliance. As noted earlier, transparency is a prominent feature of the Privacy Framework.⁶³

[155] To address transparency we considered the question: if a claimant or potential claimant looked at the publications available to the public and the website of WCB, could they find clear information about the policies and procedures governing the collection, use, disclosure, access to and correction of personal information?

[156] There are a number of items to consider in assessing the extent to which WCB is transparent to the public including claimants and prospective claimants.

(a) WCB WEBSITE

⁶² HIPA, s. 9, 10, 16, 25

⁶³ Privacy Framework, at 18

[157] WCB maintains a website at <http://www.wcbsask.com>. That website includes a Privacy Policy that can be accessed from the Home Page. It appropriately references FOIP. There is however no identification of a Privacy Officer or other office that will field queries or complaints. There is also no mention of the oversight function of or contact information for this office.

[158] Ideally, the Privacy Policy should provide contact information for the FOIP Coordinator to anyone who wishes more information or who has a complaint or access request. As discussed earlier in this Report, since there is no consolidated position of FOIP Coordinator, WCB would need to identify two persons - the Access Officer with a detailed description of that role and responsibilities and the Privacy Officer with a detailed description of that role and responsibilities. The Policy should provide contact information for each official. It also should advise citizens that if they cannot get satisfaction dealing directly with the organization's Privacy Officer or Access Officer, they have a right to contact our oversight office. Contact information for our office should be included.

(b) BROCHURES

[159] In terms of transparency, WCB has produced a brochure entitled "*Information For Workers*". At page 28, (the second to last page) in the brochure the following appears in the section dealing with the "*Appeal Process*":

Can I obtain a copy of my file?

The information in your file is available to you or your representative only for the purposes of appeal. You must apply for access to the information indicating the issue you are appealing.

[160] This is the only clear reference to access to information. There is no significant information provided in the brochure about what personal health information will be collected, how that information will be used and to whom it may be disclosed. There is no clear explanation of what information about the individual claimant will be shared with the Employer. There is no information in the brochure about what remedies may be

available to an individual who wishes to amend erroneous information. There is no description of the rights that any individual has in respect of WCB, a government institution, under FOIP and HIPA.

[161] I encourage WCB to consider producing a specific brochure similar to an excellent six panel brochure produced by WorkSafe BC entitled: *Access to Information and Protection of Privacy At WorkSafe BC*.⁶⁴ The brochure describes the purpose of the applicable *Freedom of Information and Protection of Privacy Act*, the exceptions to access and privacy rules including:

- Restrictions on the collection of personal information;
- Right of access and correction of personal information; and
- Restrictions on the use and disclosure of personal information.

[162] This British Columbia brochure is clear, simple and makes this important information accessible to anyone. If WCB in this province elects not to produce a separate brochure, it could easily include similar information in its brochure entitled “*Information for Workers*”.⁶⁵ I note that in British Columbia any WCB claimant can make an access request for his or her file without any pre-requisite launch of an appeal. This includes the right to make a breach of privacy complaint and the right to request that the record be amended to correct errors.

(c) TRAINING

[163] We learned that for newly hired employees, the WCB Solicitor provides an approximately two hour verbal orientation on privacy and privacy obligations of WCB.

[164] In addition, all WCB staff have been exposed to a privacy e-learning course between August 2005 and August 2006. This is a five module course initially developed by

⁶⁴ Worksafebc, *Access to Information and Protection of Privacy at Worksafe BC*; available at http://www.worksafebc.ca/publications/how_to_work_with_the_wcb/Assets/PDF/access_fippa.pdf

⁶⁵ WCB, *Information for Workers* (WCB, 2005); available at <http://www.wcbask.com/WCBPortal/ShowProperty/WCBRepository/formsPublications/publications/infoForWorkers/pdfContent>

Saskatchewan Telecommunications (SaskTel). This includes sets of questions. There is the opportunity to retake lessons and question sets as required. A certificate of completion is issued to each employee who has completed the course.

[165] We are familiar with this e-learning course. This provides a useful introduction to privacy for employees. This course is general information presented at a higher level. It would not be adequate for providing WCB Case Managers with useful, practical information on the collection, use and disclosure of personal health information in the course of dealing with WCB claims. This course was not created to deal with the same mix of sensitive, high-prejudice personal information and personal health information that is the 'feed-stock' of WCB operations.

B. TECHNICAL SAFEGUARDS

[166] Section 16 of HIPA does not particularize the standards for technical safeguards to protect personal health information.

[167] I observed the computer monitor screen display when access is gained by a user in WCB. Once the user inputs his password and identity the user has unrestricted access to the accounts for all claimants. There is no warning or caution message that appears when this database is entered by any user. There appears to be no questions or prompts that appear on the monitor as the viewer enters the database. There is a limited audit trail capability that tracks use and disclosure of claimant personal information for some claimants and Workers Advocates. Our understanding is that a WCB employee working on claims files can access extensive personal financial information about any non-WCB employee claimant including Social Insurance Number as well as considerable personal health information regardless of whether they are working on that claimant's file or have a legitimate need-to-know that information.

[168] In a previous Report, I indicated that I viewed the Health Informatics Association "*Guidelines for the Protection of Health Information*" as the "*relevant standard or best*

practice for Saskatchewan trustee organizations.”⁶⁶ Those technical safeguards involve equipment security, system development and maintenance (software security), communications security and privacy enhancing technologies.

[169] In the Policy Manual, Policy #10.6 (page 8) includes a section entitled *Methods of Release*. That section provides as follows:

21. ***Release of Electronic Information:*** *The access, collection and release of information stored in electronic format is considered to be the same as information stored in paper format and will be governed by this policy; an MOU will be required. Technical advice regarding the methods of releasing the data will be provided by ITS, in accordance with the provisions of the WCB’s Information Technology Security Manual, when developing the MOU. This manual is summarized in ADM 02/2002 – Information Technology Security.*
22. ***Release of Information via E-Mail:*** *E-mail messages sent outside the WCB may not be private or secure and could be intercepted. Therefore, File Information that mentions a claimant by name should not be released via e-mail without the consent of the claimant. Bulk Data may be sent to outside agencies through e-mail provided the conditions set out in Point 17 of this policy are met.*
23. ***Release of Information by Telephone:*** *The release of information over the telephone will be governed by the instructions contained in Procedure PRO 08/97-Telephone Information Disclosure.*

[170] The sections of FOIP that are cited in Policy #10.6 are sections 28, 29 and 60. There is no reference to HIPA.

[171] This portion of the Policy Manual is dated January 1, 2003, prior to proclamation of HIPA. It also contemplates further policy in this area. I have decided to defer a detailed assessment of the technical security controls to a later date. This Report will be restricted in its section 16 analysis to administrative and physical safeguards.

C. PHYSICAL SAFEGUARDS

[172] Case management teams are described by WCB as follows:

⁶⁶ OIPC, *Investigation Report H-2005-002*, at 97

Case management teams coordinate the medical and vocational services available to help workers with longer recovery periods. Teams are located in both Regina and Saskatoon WCB offices. Cases are assigned by geographic area to provide more individualized services for injured workers and employers. Each team consists of a team leader, several case managers, case manager assistants, vocational rehabilitation specialists, payment specialists and support staff. Medical personnel are also available to provide specialized support.⁶⁷

[173] Normally only those in one of the six WCB teams that deal with case management files would be expected to access a claimant's information. There are three WCB Case Management Teams based in Regina and three based in Saskatoon. There might be as many as ten Case Managers in one team along with an assortment of specialists, etc. For these case teams there is no:

- Specific policy or procedure that limits access to computer data concerning claimants; and
- Specific privacy training that addresses access to, collection, use or disclosure of the personal health information through the WCB computer system.

5. Reflections and Findings on WCB Compliance with General Statutory and Privacy Framework Requirements.

[174] Before focusing on the specific concerns of the Complainant and the appropriate 'transaction-specific' legal requirements, I now turn to my findings in respect of the general duties of WCB as framed by FOIP, HIPA, access and privacy 'best practices' and the Privacy Framework. In other words, has WCB complied with those two provincial statutes and that provincial policy in respect of its general duties as well as best practices?

A. Has WCB Met Its Obligations under HIPA?

[175] These general obligations of any trustee are neatly summarized in section 16 of HIPA.

[176] In terms of administrative safeguards I find as follows:

⁶⁷ WCB, *Information for Employers Handbook* (WCB, 2004) at 27; available at <https://www.wcb.sask.com/WCBPortal/ShowProperty/WCBRepository/formsPublications/publications/infoForEmployers/pdfContent>

- 1) The scheme of dividing privacy and access responsibilities in the manner described in WCB policies and procedures (*10.6 Access/Collection/Release of Information (POL 12/2003)*, *10.7 Storage, Archiving & Destruction of Information (POL 03/2005)*, *10.1 Third Party Access to File Information (PRO 24/95)*, *10.4 Storage, Archiving & Destruction of Information (PRO 03/2005)*) is cumbersome and confusing. In addition, I find that the role of the WCB Privacy Officer is substantially different than the role and responsibilities assigned to that office in the Privacy Framework.
- 2) The WCB policies and procedures are also deficient in that there is no discussion of the relationship between or interaction with the Privacy Officer and the Access Officer.

The prospect of two different internal investigations to deal with an access request or breach of privacy complaint, one led by the WCB Privacy Officer and another led by the Access Officer will likely lead to increased complexity and increased delay.

The kind of fragmentation evident at WCB:

- Leads to public confusion as to who is the appropriate officer within the WCB to deal with their concerns or complaints, including access requests;
 - Leads to confusion within the agency as to who is the leader on the access and privacy file; and,
 - Leads to more difficulty for the Access Officer and the Privacy Officer to each develop the requisite expertise to manage the increasingly complex world of access and privacy legislation.
- 3) I find that the definitions of “file information” in document *10.6 Access/Collection/Release of Information (POL 12/2003)* and in *10.1 Third Party Access to File Information (PRO 24/95)* do not correspond with the definition of “personal health information” in HIPA.
 - 4) I find that the terms “use”, “disclosure” and “access” are assigned different meanings than is the case under HIPA with no clarification or even flagging of the difference for anyone who reads these materials.
 - 5) I find that WCB has failed to provide clear information to WCB claimants on what personal health information will be collected, how that same information will be used and when it will be disclosed.
 - 6) The job description of the Access Officer and of the Privacy Officer includes no requirement to liaise with our office or to monitor the way that HIPA is being interpreted by our office and the courts.

- 7) I find that WCB policies and procedures fail to clearly distinguish between access to information sought by a WCB claimant and disclosure of personal health information of a WCB claimant to a third party such as the employer.
- 8) I find that WCB polices and procedures fail to adequately describe and address the need-to-know rule and the least amount of identifying information necessary for the purpose rule.
- 9) I find that there is inadequate training of Case Managers and other WCB employees specifically with respect to the need-to-know rule and the least amount of identifying information necessary for the purpose rule.
- 10) The document *10.7 Storage, Archiving and Destruction of Information (POL 93/2005)* inaccurately describes section 16 of HIPA and would fail to alert WCB staff and the public to the much broader implications of section 16.
- 11) I find that the document *1. Enhanced Security Claims* that would require a higher standard of care for WCB files for “government officials” or those with a “high media profile” unreasonably minimizes the importance of privacy protection for the vast majority of WCB claimants.

I find that WCB has failed to meet the requirements of section 16 of HIPA.

B. Has WCB Met its Obligations under FOIP?

- 12) The same comments made above in the context of HIPA with respect to assessing the delegation of powers and the role of the Privacy Officer and the Access Officer would apply equally when considering compliance with FOIP.
- 13) I find that WCB failed to have adequate policy and procedure to ensure that the requirements particularized in sections 24 to 32 inclusive of FOIP were met. The inadequacies have previously been described in detail.
- 14) The definitions of “file information” in document *10.6 Access/Collection/Release of Information (POL 12/2003)* and in *10.1 Third Party Access to File Information (PRO 24/95)* does not correspond with the definition of “personal information” in FOIP.
- 15) I find that the terms “use”, “disclosure” and “access” are assigned different meanings than is the case under FOIP with no clarification or even flagging of the difference for anyone who reads these materials.
- 16) The document *10.2 Claims Files-Access Requests (PRO 06/95)* sets out a test when WCB contemplates denying an applicant access to his or her file that is inconsistent with section 21 and section 8 of FOIP.
- 17) I find that the WCB policy and procedures fail to describe the right of any claimant to access their own personal information that is provided by FOIP. I find that those same policies and procedures operate to deprive a WCB claimant

of the right they have under FOIP to make an access to information request or to seek correction of errors in their personal information or personal health information.

- 18) I find that WCB policies and procedures (*Anonymity/Third Party Information*) fail to adequately address the duty to ensure accuracy in personal information being used by the WCB.
- 19) The job description of the Access Officer and of the Privacy Officer includes no requirement to liaise with our office or to monitor the way that FOIP is being interpreted by our office and the courts.
- 20) I find that the document *1. Enhanced Security Claims* that would require a higher standard of care for WCB files for “government officials” or those with a “high media profile” unreasonably minimizes the importance of privacy protection for the vast majority of WCB claimants.

C. Has WCB Met its Obligations Under the Privacy Framework?

- 21) I find that WCB has failed to make readily available the name and contact information for the Privacy Officer as required by *Saskatchewan Privacy Principle 9. Openness*.

Since approximately early 2004 until approximately March 28, 2007, the individual listed on the Government of Saskatchewan Privacy website as “Privacy Officer” for WCB is one and the same as the Access Officer even though a different individual is identified as Privacy Officer in WCB documents *10.7 Storage, Archiving & Destruction of Information (POL 03/2005)* and *10.4 Storage, Archiving & Destruction of Information (PRO 03/2006)*.⁶⁸

- 22) I find that WCB has significantly reduced the role of the Privacy Officer so that it no longer conforms to the job description that appears in the Privacy Framework. More specifically, the WCB Privacy Officer is not required to:
 - Ensure that WCB operates within the legal regime of the Province of Saskatchewan since that legal framework is largely FOIP and HIPA and both are addressed by the Access Officer; and
 - Facilitates ongoing education and awareness activities since this is being done by the Access Officer.
- 23) In the result, it follows that WCB has failed to do what is necessary to enable it to meet *Saskatchewan Privacy Principle 1. Accountability* and *Principle 11. Compliance*.

⁶⁸ The fact that the Government of Saskatchewan Privacy website, www.privacy.gov.sk.ca, has been out of service since approximately March 28, 2007 may be only temporary since there has been no accompanying Government announcement.

- 24) I find that WCB has failed to do what is necessary to enable it to meet *Saskatchewan Privacy Principle 10. Access*. I acknowledge and understand that WCB takes the position that section 171.1. of WCA denies claimants access to their own information unless they are appealing a decision. For the reasons outlined in our submission to the WCA Committee of Review,⁶⁹ I question that conclusion and have suggested that it need not operate to deprive any claimant of the right they would otherwise have under FOIP to make an access request or seek to have errors in their record corrected.
- 25) I further find that WCB has failed to do what is necessary to enable it to meet *Saskatchewan Privacy Principle 8. Safeguards* for the reasons outlined including failures in terms of specific training to the need-to-know rule and the ‘least amount of identifiable information necessary for the purpose’ rule, the differential treatment of those claimants who are “government officials” or persons with a “high media profile”, weaknesses in the policy and procedures and the particular system that WCB has created to deal with its statutory access and privacy responsibilities.
- 26) I find that the document *1. Enhanced Security Claims* that would require a higher standard of care for WCB files for “government officials” or those with a “high media profile” unreasonably minimizes the importance of privacy protection for the vast majority of WCB claimants.
- 27) I find that the WCB policies and procedures fail to conform to Clause 4.3 of the *Government of Saskatchewan Privacy Protection Checklist* in that there is no written policy and procedures explaining (a) the process for citizens to challenge the accuracy of their personal information or (b) the process for verifying and correcting errors?
- 28) I find that the restriction that an applicant can only use the record they may obtain from WCB about them for “...*the purposes of that reconsideration or review*” to be unreasonable as well as inconsistent with the right of access as described in the Privacy Framework.

6. Did WCB Improperly Disclose Personal Health Information to the Complainant’s Employer?

[177] I take the view that the standard for protecting any personal health information is influenced by the sensitivity of the information. In other words, certain types of personal information tend to be closer to the biographical core of the individual and will usually be considered more prejudicial to the individual. Personal health information is usually

⁶⁹ OIPC, *OIPC Submission to the Workers' Compensation Board Review Committee* (October, 2006); available at www.oipc.sk.ca under the ‘What’s New’ tab

closer to the high prejudice end of the continuum. That means that when dealing with personal health information, it is particularly important that there be robust standards to protect the privacy of the individual and the confidentiality of that personal health information.

[178] As noted earlier at para [25] to [27], by reason of section 4(4) of HIPA, personal health information in the custody or control of WCB will not be subject to certain disclosure rules in HIPA but will be subject to FOIP. More specifically, disclosure of personal information by WCB is governed by section 29 of FOIP.

[179] Disclosure is not defined by FOIP. We have however defined disclosure as follows:

*Disclosure is the sharing of personal information with a separate entity, not a division or branch of the public body or trustee in possession or control of that record/information.*⁷⁰

[180] On the evidence, the Complainant at no time provided written consent for the disclosure of this personal health information to the Employer.

[181] By reason of section 23(3)(k) of FOIP, sections 171 to 171.2 of the WCA have been made paramount to FOIP provisions in and only in the event that the provisions actually conflict. Section 23(3)(k) provides as follows:

23(1) Where a provision of:

...

(3) Subsection (1) does not apply to:

...

(k) sections 171 to 171.2 of The Workers' Compensation Act, 1979;

...

[182] This would require a situation where to comply with a FOIP provision would require a violation of section 171 to 171.2 of the WCA.

⁷⁰ OIPC, *Annual Report 2005-2006*, at 59

[183] In any event, Sections 171 and 171.1 of the WCA are not engaged on the facts of the complaint raised by the Complainant in this case.

[184] Section 171.2 may be relevant to the complaint in question.

171.2(1) Where an employer has requested reconsideration of or applied for a review of a decision made pursuant to this Act with respect to a worker's claim for compensation, notwithstanding that the employer is not a party to the reconsideration or review, the board may on written request, in accordance with this section, grant the employer, or a representative of the employer on presentation of the employer's written authorization, access to the information that the board used to make its decision with respect to:

(a) the facts of the situation in which the injury occurred; or

(b) the percentage of the cost of compensation which has been assigned by the board to the injury cost record of that employer with respect to the injury the worker suffered out of and in the course of his employment with that employer;

that is obtained on or after the date this section comes into force for the purposes of this Act, but the person receiving the information shall use that information only for the purposes of that reconsideration or review.

(2) Where a request is made pursuant to subsection (1), the board shall notify the worker or any person whom he has authorized in writing to be his representative of the request and the information that it will grant access to and inform the worker or his representative that he may make any objection to the release of the information within the time specified in the notice.

(3) On the expiration of the time mentioned in subsection (2), the board shall, after consideration of any objections, determine what information it will grant the employer or his representative access to and so notify the worker or his representative in writing sent by registered mail.

(4) The worker may, within 21 days of the date that the notice pursuant to subsection (3) is mailed, request the board to reconsider its decision made pursuant to subsection (3).

(5) The board shall not grant the employer or his representative access to any information until the expiration of the time allowed for a request pursuant to subsection (4) or the determination of the request, whichever is later.

(6) The board shall inform the worker or his representative of all information it has granted an employer or his representative access to pursuant to this section.

(7) *An employer may request the board to reconsider its decision with respect to the information the board has granted access to within 21 days of the date of that decision.*

[185] In the circumstances of this case, there was no employer initiated request for review or reconsideration under the provisions of the WCA. In other words, the triggering event or threshold for section 171.2 to be engaged never occurred. In the result there is not an actual conflict between sections 171 to 171.2 of the WCA and FOIP although there may be limited overlap.⁷¹

[186] I therefore find that FOIP does apply to use and disclosure of the Complainant's personal health information by WCB.

[187] The personal health information in this case was part of the following documents:

- 1) Letter from WCB to Complainant dated February 21, 2006
- 2) Letter from WCB Health Care Services to Complainant dated March 15, 2006
- 3) Letter from WCB to Complainant dated April 20, 2006
- 4) Letter from WCB to Complainant dated May 16, 2006
- 5) Letter from WCB to Complainant dated October 18, 2006 (5 paragraphs)

[188] WCB has confirmed that copies of each of the foregoing documents, except for 4), were sent to the Employer at or about the same time the original letter or document was mailed to the Complainant.

[189] The personal health information includes diagnostics, treatment types, treatment dates, test particulars, prognosis and other information. I do not wish to compound the likely prejudice from sharing of this information, which gave rise to the subject complaint, by now republishing details of this personal health information of the Complainant.

[190] Documents 1) and 3) contain the Complainant's personal health information. I find that this was an inappropriate disclosure.

⁷¹ Our office discussed the operation of paramountcy in detail in our Submission to the Workers Compensation Act Committee of Review [Office of the Saskatchewan Information and Privacy Commissioner (hereinafter OIPC), *OIPC Submission to the Workers' Compensation Board Review Committee* (October, 2006); available at www.oipc.sk.ca under the 'What's New' tab]

[191] Document 2) above was described by WCB as not containing personal health information. I find otherwise. The document clearly describes a proposed assessment by a team of health care providers. The definition of personal health information in section 2(m) of HIPA includes “*information with respect to any health service provided to the individual*”. Even if the personal information does not qualify as personal health information under HIPA it will be subject to FOIP as personal information.

[192] WCB asserted that Document 4) above was not disclosed to the Employer and I have seen no contrary evidence.

[193] WCB asserted in respect of Document 5) above as follows:

As was discussed previously since the employer has a vested interest in the outcome of a claim, or an appeal of a claim it would not be improper to provide the information contained in the October 18, 2006 letter to the employer. It is this type of correspondence that the employer may rely on in deciding whether or not to take part in the appeal.

[194] That letter includes specific information about treatments and medical studies undergone, medical test results, matters in respect of which there was no medical evidence, diagnostic information and a denial of responsibility. In the event that the Complainant chose not to appeal, there would be no reason or basis for disclosing this to the Employer. That presumably would not have been known at the time this letter was posted. I find that to the extent some of this information could, under the WCA, be shared with the Employer, such a determination is only appropriate if and when an appeal is initiated by the claimant or employer.

[195] WCB’s Solicitor indicated that in his view the Employer should be entitled to see all information relevant to the following needs:

- To determine the ability to return to work;
- Confirming acceptance of a claim and the rate of pay;
- Notice when a worker appeals; and
- Issues of cost relief.

- [196] I have not found a clear description of “*cost relief*” in the material produced by WCB. I am advised by WCB’s Solicitor that the WCB definition of “*cost relief*” is ‘*removing or transferring claim costs from an employer’s account/experience rating.*”
- [197] On the basis of the material I have reviewed, my understanding is that generally claim costs from a compensable accident are normally charged against the accident Employer’s account/experience account. There are, however, **exceptional circumstances** when WCB may relieve the Employer of all or part of the claim costs. The appropriate distribution of the relieved costs will be determined by the WCB. Some factors that may trigger cost relief include negligence on the part of another employer or previous injuries.
- [198] The WCB Solicitor confirmed that Saskatchewan employers have no standing to challenge, dispute or debate medical assessments and therefore wouldn’t need particularly granular personal health information about any claimant. A WCB brochure “*Information for Workers*” states that “[t]he Act gives the WCB responsibility to determine if an injury arises out of or in the course of employment.”
- [199] I find that the correspondence in question, when copied to the Employer, had the effect of disclosing personal health information of the Complainant to which, in our understanding, the Employer was not entitled.
- [200] I acknowledge that it may well be that the Employer may be **interested** in all of the personal health information of the Complainant shared with it on this WCB claim file. The Employer is not however **entitled** to all of the personal health information and WCB exceeded its authority in making these disclosures.
- [201] There is no specific policy to assist Case Managers in meeting the need-to-know and limiting rules on any given case file. There is no specific training on how to sever personal health information that an employer is not entitled to view.
- [202] In my view the much better practice would have been for the Case Manager to not copy correspondence intended for the Complainant to the Employer but to prepare a much

shorter note revealing only the information required by the Employer. WCB has offered no persuasive evidence that a separate letter could not be prepared other than noting some additional work would be required. I find that the convenience of the WCB Case Managers ought not to take precedence over the claimant's legitimate privacy interests.

[203] I recognize that Case Managers and members of the case management teams in WCB have expertise in evaluating claims and applying the provisions of the WCA. I am persuaded by the WCB's Solicitor that the nature of the work of these case managers makes it very difficult to prescribe with great precision when certain kinds of information can or cannot be collected, used or disclosed. Accepting the need for Case Managers to have scope to exercise their judgment and discretion in managing claim files, WCB could and should develop a set of reasonable criteria for Case Managers to consider in deciding what to release to employers. This might take the form of a set of key questions for WCB Case Managers to ask themselves in their investigation and case management work.

[204] Those reasonable criteria should reflect the limiting rule and the need-to-know rule described earlier in this report.

[205] I think it is important that WCB rather than our office develops these criteria so that they will reflect the requirements of appropriate case management and that they can ensure that they will not unduly impair the important statutorily mandated work of WCB.

[206] Although the complaint in question specifically related to disclosure of personal health information to a third party, i.e. the Employer, we have also considered whether WCB had taken appropriate steps to restrict access by other WCB staff who would not have had a legitimate need-to-know the personal information of the Complainant.

[207] A well established best practice in modern privacy regimes is to limit the use of any individual's personal information or personal health information by employees in a government institution to those employees who have a legitimate need-to-know. This is explicit in HIPA.⁷²

⁷² HIPA, s. 23

[208] I note that the following commentary appears in the Privacy Framework:

5. To help ensure compliance with this [Use and Disclosure] principle, it is a good idea to take steps to limit the access of employees to personal information to only those who can be reasonably expected to require the information to perform their job duties.⁷³

[209] Commentary in the *Alberta Freedom of Information and Protection of Privacy Guidelines and Practices Manual*⁷⁴ includes the following:

A public body can use information only to the extent necessary to carry out its purpose in a reasonable manner.

...

For example, employees in a particular program area who have access to personal information in an electronic database should be provided with access to only those data elements they require to do their job, not to the whole database.

[210] This is referred to as the need-to-know rule.

[211] As previously noted, I observed a demonstration of a WCB employee accessing via computer the claim file on a claimant. Once a user name and password are entered, the employee has gained access to all claim files for non-WCB employee claimants. There are no warnings or advisory notices that appear on the screen to prompt a need-to-know assessment by the user. WCB has tasked no one with responsibility to monitor which claim files WCB employees have accessed via their computers. There is apparently no process to conduct random audits of use or disclosure transactions.

[212] I found there is inadequate policy direction and inadequate training for Case Managers and case management teams specifically on application of this need-to-know rule as well as what is appropriate to share with Employers.

⁷³ Privacy Framework, at 16

⁷⁴ Government of Alberta, *Alberta Freedom of Information and Protection of Privacy Guidelines and Practices Manual, Chapter 7: Protection of Privacy, 7.6 Use of Personal Information* (Alberta Government Services Access and Privacy Branch, 2005) at 248

7. Did the WCB Improperly Disclose Personal Financial Information to the Employer?

[213] I accept the need under the WCA to provide certain financial information concerning the claimant to the claimant's Employer. That Employer will bear financial responsibility for any compensation award. That right to information is not unqualified however. It must be directly related to information that the Employer has a legitimate need-to-know.

[214] The following documents were sent to the Complainant but in each case a copy was also sent to the Employer:

- 1) Memorandum dated June 26, 2006 from [WCB Employee]
- 2) Letter from WCB to Complainant dated August 23, 2006
- 3) Letter from WCB to Complainant dated October 18, 2006 (2 paragraphs)
- 4) Letter from WCB to Complainant dated October 18, 2006 (5 paragraphs)

[215] Document 1) clearly references "*review for cost relief*". It documents the most recent three Employers of the Complainant prior to the current claim in respect of the current Employer. It includes the date of employment, the name of those Employers and the community in which they are located. The final entry in this document states: "*These Employers will be contacted to ensure this worker was employed here in order to provide costrelief [sic]*". This appears to have been an appropriate disclosure.

[216] Document 2) deals with confirmation of earnings from a previous employer. It also details earnings during the recovery period. There is advice as to a recalculated entitlement to wage loss on both claims. There is also reference to an overpayment to the Complainant and the basis for recovery by WCB of the overpayment from the ongoing entitlement.

[217] The submission of WCB on this point includes the following statement:

As was stated above, this type of information is used to determine if cost relief is available to an employer. If the current costs are attributable, in whole or in part, to an injury with a previous employer, the current employer may receive

cost relief. The current employer requires this type of information so that they may properly apprise themselves of their right concerning the costs for which they would be responsible for as opposed to costs which may have arisen out of other incidents not related to the worker's employment with them.

The provision of overpayment information to the employer enables that employer to know that claim costs will be reduced once the overpayment is recovered.

[218] Certainly much of the information disclosed to the Employer appears appropriate. Disclosure about the specific terms of the overpayment/repayment arrangements however is not information the Employer would have a legitimate need-to-know. That would have been a matter exclusively for WCB and the Complainant.

[219] WCB has acknowledged that there was no necessity for document 3) to have been shared with the Employer. This document related to certain action taken in respect to an overpayment and corrective action. WCB acknowledged this as follows:

It is my view that this type of correspondence need not be provided to the employer as the matter of settling the overpayment is one that is between the Board and the worker.

[220] Document 4) includes reference to the overpayment and alternate financial arrangements.

[221] WCB's submission on this item is as follows:

As was discussed previously since the employer has a vested interest in the outcome of a claim or an appeal of a claim it would not be improper to provide the information contained in the October 18, 2006 letter to the employer. It is this type of correspondence that the employer may rely on in deciding whether they would like to take part in the appeal.

The employer was also informed through this correspondence that the claim would end as of a certain date. This is information which the employer requires for the management of their business.

[222] I recognize that certainly some of the information in document 4) may be appropriate to share with the Employer, but it is intertwined with other information that, although perhaps of interest to the Employer, is not a matter of a legitimate need-to-know. As noted with the earlier discussion dealing with personal health information, it would be

more appropriate for the Case Manager to send to the Employer a separate communication restricted to items that the Employer has a clear need-to-know. By requiring a separate communication to the Employer, Case Managers will perhaps be more likely to ask themselves whether the Employer truly has a need-to-know the subject information.

[223] A memorandum from a WCB Case Manager dated October 30, 2006 includes the following comment:

[Complainant] also upset his employer now knows what his non compensable concerns are as per my recent letter that was cc to emp. I apologized for that error....”

[224] I find that WCB did disclose to the Employer more personal financial information than was warranted. This was in violation of section 29 of FOIP since there was no written consent from the Complainant to authorize this disclosure.

8. Did the WCB Improperly Disclose Personal Information and Personal Health Information to Persons Unknown?

[225] A memorandum from a Case Manager at WCB dated October 30, 2006 stated that,

[Complainant] also wanted to know where the updated copy of his file was, I explained it was mailed out to him last week. He said he did not receive it. He usually gets his letters in one day. I suggested it may be heavier than a letter and takes a different process to deliver, I was not sure of Canada Post's procedures on delivery.

[226] The WCB submission on this point is as follows:

It is my understanding that [the Complainant's] file was never received by him, nor retrieved by the WCB and its whereabouts remain a mystery. In response to this concern please find enclosed the WCB's Policies, Procedures and practices for handling personal information.

[227] WCB advised of the process governing the provision of file material to claimants that was in force at the material time:

In addition to the attached documentation, I have been advised by the Board's Director of Operations, North, that the following process is followed when copies of files are requested. This process has not been formalized in a written policy or procedure:

Files are requested by the Case Manager (CM)/Case Manager Support (CMS) or Claims Entitlement Specialist using the CICS system.

The work is received in document processing in the FCI work queue.

The clerk requests that a copy is printed through the high volume print queue. The claims documents are printed by I.T.S. in the order that they are in the claims folder. The printer inserts a coloured piece of paper between each claim. The documents are delivered to the document processing area. Each claim file is processed separately as follows:

1. If the request indicates that the file does not contain sensitive information the clerk places the documents in an envelope or box if it is a large file. A printout of the DCLD screen is attached and the item is handed to reception. The receptionist prints out the label and attaches it to the envelope or box and then delivers it to the mail room.

The mail room weighs the item and attaches appropriate postage. The information then gets delivered by courier to the post office at the end of the day with the rest of the mail.

Or

2. If the person requesting the file has not indicated "no sensitive information" the file is delivered directly to the requester.

If the file is returned to the requestor as noted above, the following takes place:

The CM/CMS reviews the file for sensitive material or material form [sic] another file.

The CM/CMS requests the Administrative Support to prepare a cover letter.

The Administrative Support prepares the letter and provides it to the CMS. The CM/CMS attaches the letter to the file and sends the material for mailing.

In Saskatoon, the mail is done up and sent out by the Receptionist.

In Regina, the mail is picked up and sent out by the mail room.

[228] The WCB submission continues:

The WCB regrets the disappearance of [the Complainant's] file, but remains confident that this is an extremely rare occurrence. The WCB also welcomes recommendations from your office that may further ensure that such occurrences rarely, if ever, happen.

[229] In addition to the above noted materials, I have been advised by WCB that commencing January 29, 2007 a new approach was implemented in the Saskatoon office. This has been described in correspondence from the Board Solicitor as follows:

Effective immediately all file copies leaving our Saskatoon office are to be released using one of the two following methods:

1. Pick Up

Clients in Saskatoon are to be contacted and advised that their file is ready. Prior to receiving the file, the client must provide identification and sign a release form. The release form is to be scanned to file. Clients outside of Saskatoon may receive their file this way if they chose. Travel costs for the sole purpose of picking up the file will not be paid.

2. Xpresspost Mail

No files are to be mailed utilizing regular mail services. Xpresspost Mail is to be utilized in all circumstances.

Place the file and covering letter into a properly addressed envelope/box. This is then to be delivered to the front desk. The Xpresspost label will be applied and the file mailed.

All Xpresspost mailings will be requesting a signature.

Each mailing will be tracked and a completed Canada Post form will be printed off and scanned to file.

[230] I am unclear what is meant by “release form”. All that WCB should be entitled to require is a simple acknowledgement of receipt. Any requirement that the claimant must release WCB of any type of claim would be improper. Access is an important right of citizens including WCB claimants. Save and expect for the specific provisions that would allow WCB to deny access, WCB should not impose other restrictions or conditions on a claimant exercising a right of access.

[231] The foregoing Saskatoon procedure has not been formally documented as a WCB policy or procedure.

[232] Subsequent to January 29, 2007, I understand that a new file release process has been put into practice in both Regina and Saskatoon WCB offices. This has been described as follows:

FILE RELEASE PROCESS

1. *Releases that are handled by operations staff will have copies supplied by document processing. These will be forwarded to the requestor by the image file clerk (queue is FC1). The case manager or CES will either have the client pick up the file or will send it by Xpress post. Copies left in trays on the floors (in Regina) for the mailroom to send out must clearly indicate that they are to be sent by Xpress post.*
2. *Releases with no sensitive information will continue to be handled by the image file clerk in document processing.*
 - *IFC will have file printed and will box if required. They will check documents to make sure only one client's file is enclosed. A print out of the VCLM screen is attached to the copy and handed to reception.*
 - *The receptionist will create an address label for the box or envelope and will deliver the item to the information handling supervisor or designate.*
 - *The supervisor will check to ensure the address is correct and will then deliver the item to the mail room with instructions to send Xpress post.*

[233] I start from the position that the personal information and personal health information in the possession of WCB is sensitive and prejudicial. It comprises in very large part either personal health information or personal financial information. It includes detailed diagnostic, treatment and care information from an array of primary providers and specialists. It includes particulars of compensation received from either WCB or through one's employment.

[234] I do not understand the provision in the procedures of WCB that requires someone to designate whether or not material in any given claim file is or contains “*sensitive information*”. Given the business of WCB, I strongly encourage WCB to view all of its claims files and their contents as “sensitive information” and treat it accordingly.

[235] I find that it is inappropriate to send out claim file material to any claimant by ordinary mail. Although I have no evidence that an improper disclosure resulted from WCB actions, in this case that risk remains. In the result, WCB failed to adequately safeguard this information.

[236] When the claimant lives in any city or major town in Saskatchewan, I recommend that the claimant be given the opportunity to attend at a WCB office to physically pick up the file. Otherwise the file should be sent by courier. In the case of a claimant living outside a city or town, the file should be sent only by express mail such that there is a record of the envelope and an ability to trace that envelope in the event that it does not arrive as anticipated.

[237] I further recommend that a double envelope system be adopted. The outside envelope would have the name of the claimant and address. The inside envelope should have a bold notice to the effect:

THIS DOCUMENT IS CONFIDENTIAL AND IS TO BE OPENED ONLY BY THE ADDRESSEE.

[238] This Report covers a lot of material and many issues. I recognize that the changes we are recommending in this Report are extensive. They include:

- reorganization of the administration and internal oversight of the ‘access and privacy file’;
- amend the various policies and procedures of WCB; and
- make WCB more transparent to claimants, employers and the public in terms of its information practices.

[239] I suggest that these changes should improve public confidence in the important work of WCB and may simplify some of the WCB operating activities. I further suggest that these changes will significantly bring WCB practices into alignment with FOIP and HIPA as well as access and privacy best practices. Such changes will also move Saskatchewan a significant distance to realizing the objectives of the Privacy Framework as those objectives were articulated by the Saskatchewan Government in the fall of 2003.

[240] I appreciate the excellent cooperation received from WCB and in particular, its Solicitor, throughout this investigation.

VI. RECOMMENDATIONS

[241] That WCB provide the Complainant with a formal apology for the improper disclosure of personal health information and personal information to the Employer and for the loss of his information resulting from the failed attempt to mail a package of information to the Complainant.

[242] That WCB employ its best efforts to immediately require the Complainant's Employer to return to WCB the following materials in order that WCB can properly destroy those records:

- 29) Letter from WCB to Complainant dated February 21, 2006
- 30) Letter from WCB to Complainant dated March 15, 2006 (2 paragraphs)
- 31) Letter from WCB to Complainant dated April 20, 2006
- 32) Letter from WCB to Complainant dated October 18, 2006
- 33) Letter from WCB to Complainant dated October 18, 2006 (5 paragraphs)

[243] That WCB revise all relevant policies and procedures to ensure they are harmonized with FOIP and HIPA.

[244] That WCB reconsider the question of administration policy and consider a single FOIP Coordinator or FOIP Officer role with responsibility for overseeing compliance with FOIP and HIPA. This would be in substitution for the two separate offices of Access Officer and Privacy Officer and would capture all of the responsibilities currently assigned to both of these two positions. The job description for the FOIP Coordinator or

FOIP Officer should reflect the job description described in our January, 2004 FOIP FOLIO. This single officer should be a senior person who reports directly to the Chief Executive Officer of WCB.

[245] That WCB revise its brochures and public education materials to clearly describe the information practices of WCB and particularly the collection, use and disclosure of personal health information and personal information, access by claimants and correction of incorrect information.

[246] That WCB revise its website notice to include the following features:

- Identification of FOIP and HIPA as the relevant access and privacy laws governing WCB.
- Clear contact information for anyone who wishes to obtain more information about collection, use, disclosure, access to or correction of personal information practices and in the event that they cannot obtain satisfaction by dealing with WCB, contact information for the Office of the Saskatchewan Information and Privacy Commissioner.
- In light of our recommendation for a single FOIP Coordinator or Officer, our recommendation is that this position would be identified in the privacy notice as the first place to go to resolve a complaint involving WCB information practices.

[247] That WCB develop training tools and materials designed specifically for Case Managers and members of the case management teams that reflect other recommendations in this report.

[248] That WCB ensure that Case Managers and the members of claim management teams are discouraged from routinely forwarding copies of correspondence intended for the claimant to the claimant's Employer.

[249] That WCB develop either a set of clear criteria for Case Managers to consider in deciding what to release to Employers or a set of key questions for those Case Managers to ask themselves in processing claims files.

[250] That WCB ensure all staff have a clear understanding of the need to restrict disclosure to the least amount of information necessary for the purpose and to share information with anyone other than the claimant on a strict need-to-know basis only.

[251] That the WCB adopt a new procedure for sending personal information or personal health information to claimants that would include the following features:

- Claimants should always be given the opportunity to attend at a WCB office and, after providing proof of identity, be able to physically pick up a copy of their information. WCB should obtain an acknowledgement of receipt.
- In the event that option is not attractive to a claimant:
 - For claimants who live in any city or town, the file should be sent by courier to the claimant.
 - For claimants living outside of a city or town, the material should be sent by express post such that there is a record of the envelope and an ability to trace that envelope in the event that it does not arrive as anticipated.
 - A double-envelope system should be utilized. This includes an outside envelope with the name and address of the claimant. This also includes an interior envelope with a bold notice to the effect: **THIS DOCUMENT IS CONFIDENTIAL AND IS TO BE OPENED ONLY BY THE ADDRESSEE.**

[252] That WCB revise its procedures to establish a clear right of access for any claimant to their own personal health information and personal information.

[253] That WCB revise its procedures to establish a clear right for any claimant to request that an error in their personal health information or personal information be corrected.

Dated at Regina, in the Province of Saskatchewan, this 28th day of March, 2007.



R. GARY DICKSON, Q.C.
Information and Privacy Commissioner for
Saskatchewan