Office of the
Saskatchewan Information
and Privacy Commissioner

INVESTIGATION REPORT 139-2023

Workers' Compensation Board

August 22, 2023

Summary: The Prevention Department at Workers' Compensation Board (WCB) completed a program called "Everything DiSC [Dominance, influence, Steadiness and Conscientiousness] workplace training". The Complainant, an employee, became concerned regarding the collection and use of their personal information, including the sharing of their personal information with managers and co-workers. The Complainant raised their concerns with WCB's Privacy Officer but was dissatisfied with the response. Therefore, the Complainant requested that the Commissioner investigate. The Commissioner found that WCB did not demonstrate it had authority to collect the personal information involved in the matter, and so the use of the personal information would not have been authorized, either. The Commissioner made a number of recommendations, including that WCB conduct a comprehensive privacy impact assessment if it plans to continue to use the "Everything DiSC workplace training" in the future.

I BACKGROUND

[1] On April 11, 2022, the Vice President, Prevention & Employer Services at Workers' Compensation Board (WCB) sent an email to all staff within the Prevention Department. The email was regarding a culture action plan to address the findings in a cultural assessment of the Prevention Department. A part of the culture action plan was the "Everything DiSC [Dominance, influence, Steadiness and Conscientiousness] workplace training" (DiSC). Within the email to staff, the Vice President described the DiSC process as follows:

> A big part about the culture action plan is about building relationships, and a good place to start improving interpersonal relationships is through the DiSC process.

> [Name] from [Organizational Development] will be sending out a DiSC profile survey in the coming weeks and then we can work through a workshop. Everything DiSC workplace training explores individual workplace styles and some strategies for connecting with each other, improve team communication and feedback. We'll learn and apply skills to help with:
>
> - Self-awareness
> - Understanding the workplace styles of others, and
> - Identifying strengths and opportunities.

[2] On April 20, 2022, the Complainant (an employee of WCB) received an email with instructions on setting up the "Everything DiSC Workplace Profile assessment" on a third-party website.

[3] On May 25, 2022, a manager from WCB's Organizational Development sent an email to the Complainant. A copy of the Complainant's personalized DiSC profile was attached to the email.

[4] On September 15, 2022, an Assistant Director in the Prevention Department sent an email to all staff in the Prevention Department. Within the email, it said that the Prevention Department has completed its "DiSC analysis and will finish off with Organizational Development…".

[5] On October 19, 2022, the Assistant Director sent a reminder to all staff to bring their DiSC profile to a cultural workshop.

[6] On March 7, 2023, another Assistant Director in the Prevention Department sent an email to all staff. Attached to the email is a six-page report entitled "Prevention DiSC Close-Out Report". On the fifth page of the report, there is a diagram that lists out each staff member's name and their "DiSC style".

[7] On March 8, 2023, the Complainant emailed WCB's Privacy Officer. The Complainant detailed their privacy concerns, including:

- they were not given a choice to complete the DiSC assessment;
- they were not given the choice regarding the sharing of their DiSC style with other WCB staff;
- that it was their understanding that their detailed DiSC Workplace profile would only be provided to them; however, it was a manager within the Organizational Development who sent them their DiSC profile. In other words, the manager had access to the Complainant's personal information; and
- that any recipient of the six-page "Prevention DiSC Close-Out Report" knew their DiSC style.

[8] Within that same email, the Complainant asked WCB's Privacy Officer the following questions:

- What legislative authority WCB was relying on to collect DiSC profiles of WCB staff;
- How the WCB intend to use the DiSC profiles; and
- How the WCB intended to safeguard the DiSC profile.

[9] On April 26, 2023, the Complainant followed up with the WCB privacy officer by email. The Complainant also asked who is privy to their DiSC profile.

[10] On May 4, 2023, WCB responded to the Complainant. Regarding authority for collection, WCB cited section 28 and subsection 29(2)(l) of FOIP as its authority "to collect and use personal information of its employees for the purpose of management, audit and administration of personnel."

[11] Regarding how WCB intends to use the DiSC profiles, WCB said:

> Data of all profiles is aggregated and used to assist in the establishment of team learning and development opportunities. Your personalized data can be accessed by you and the Manager of Organizational Development to establish your personal learning and development opportunities.

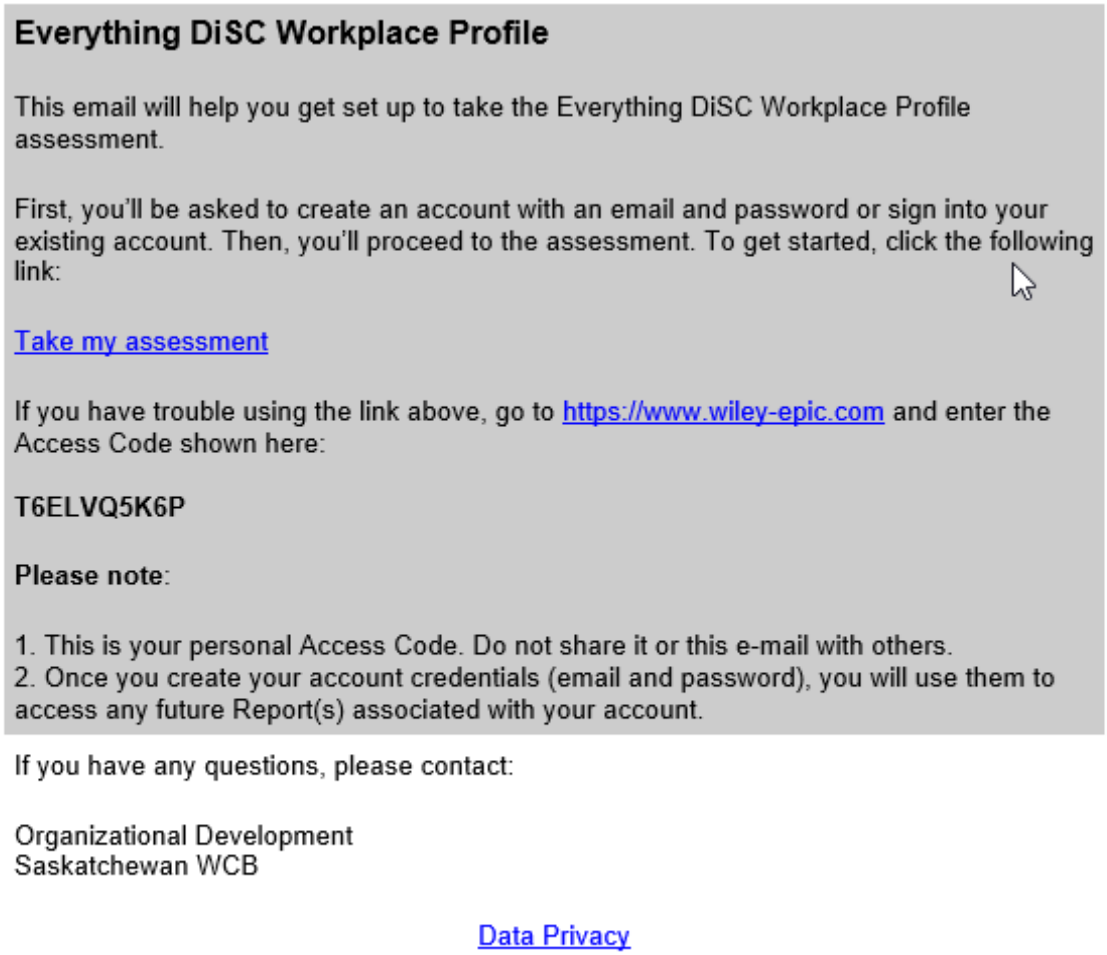
[12] Regarding how WCB intends to safeguard the DiSC profiles, WCB said:

> The collection of information is subject to the "Data Privacy" terms and the "Privacy Policy" to which you agreed when you created your account. Additionally, access to your profile is limited to yourself and the WCB administrator (Manager of Organizational Development in HR).

[13] Regarding who is privy to the Complainant's DiSC profile, WCB said:

> Yourself and the WCB administrator (Manager of Organizational Development in HR).

[14] On the same day, the Complainant asked what "Data Privacy" terms and "Privacy Policy" the WCB Privacy Officer was referring to in WCB's email. In response, WCB sent screenshots of the third-party website used for the DiSC assessment that contained links to the third party's Data Privacy terms and privacy policy.



Everything DiSC Workplace Profile

This email will help you get set up to take the Everything DiSC Workplace Profile assessment.

First, you'll be asked to create an account with an email and password or sign into your existing account. Then, you'll proceed to the assessment. To get started, click the following link:

Take my assessment

If you have trouble using the link above, go to https://www.wiley-epic.com and enter the Access Code shown here:

T6ELVQ5K6P

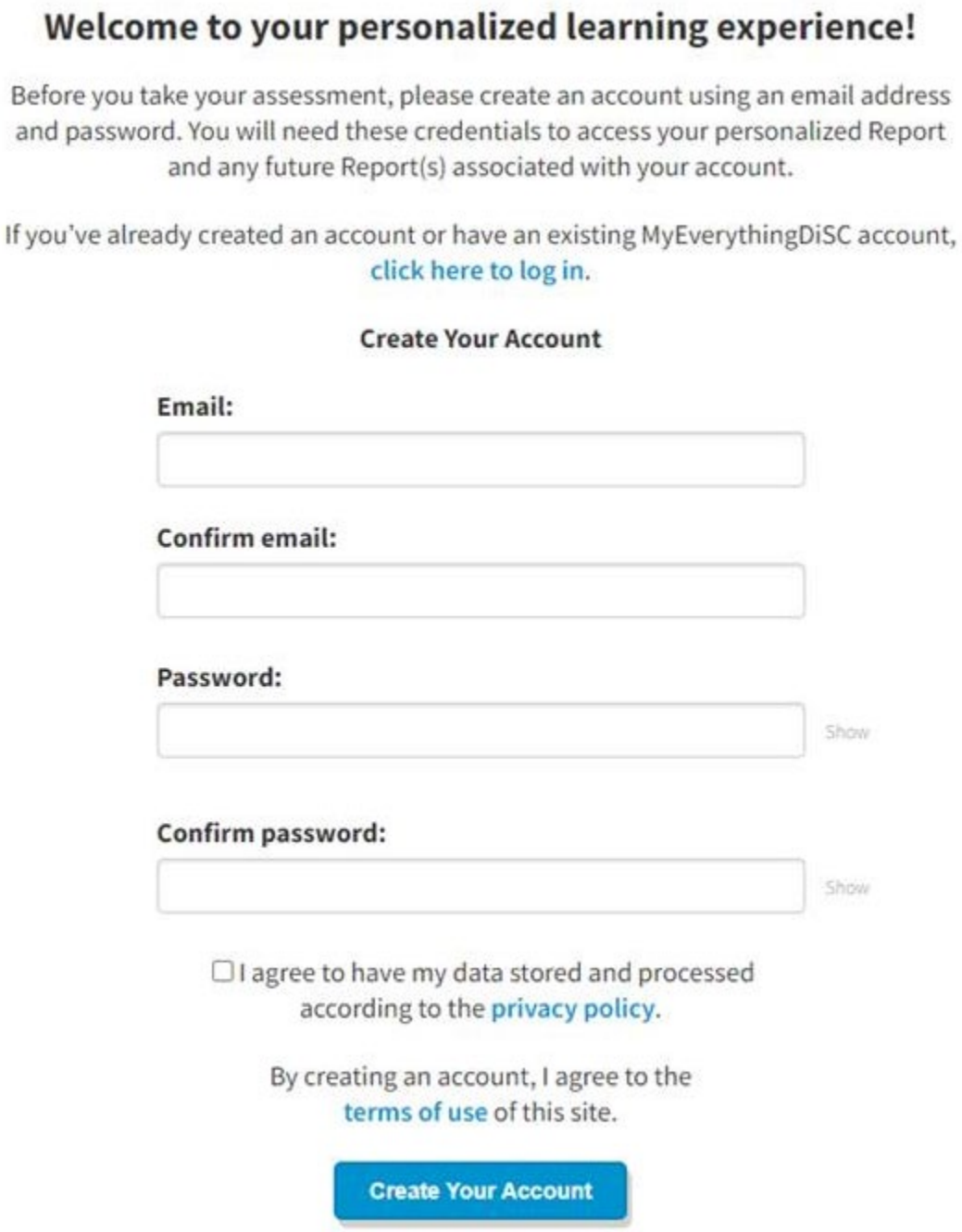
Please note:

1. This is your personal Access Code. Do not share it or this e-mail with others.
2. Once you create your account credentials (email and password), you will use them to access any future Report(s) associated with your account.

If you have any questions, please contact:

Organizational Development
Saskatchewan WCB

Data Privacy



[15] The Complainant was not satisfied with WCB's response to their privacy concerns. Therefore, on May 23, 2023, the Complainant requested that my office undertake an investigation.

[16] On July 10, 2023, my office notified WCB and the Complainant that my office was undertaking an investigation.

[17] On July 10, 2023, WCB provided a portion of its submission to my office. Then, on August 17, 2023, WCB provided the remainder of its submission to my office.

[18] On August 10, 2023, the Applicant forwarded an email dated July 5, 2023 from a manager within the Prevention Department to six staff members, including the Complainant. The Manager asked the staff members to send them (the Manager) their "disc image" if they (the staff members) are okay with it being posted to their (the Manager's) cubicle wall.

II DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[19] WCB qualifies as a "government institution" as defined by subsection 2(1)(d)(ii) of FOIP and section 3, Part I of the Appendix of *The Freedom of Information and Protection of Privacy Regulations*. Therefore, I find that I have jurisdiction to conduct this review.

2. Did a privacy breach occur?

[20] A privacy breach occurs where there is an unauthorized collection, use and/or disclosure of personal information (*Guide to FOIP*, Chapters 6: "Protection of Privacy". Updated January 18, 2023 [*Guide to FOIP*, Ch. 6], p. 265).

[21] To determine if a privacy breach occurred, I must first determine if personal information is present. If so, then I must determine if WCB has demonstrated it had authority to collect, use and/or disclose the personal information.

a. Is there personal information?

[22] For the privacy provisions at Part IV of FOIP to be engaged, the information at issue must constitute "personal information" as defined by subsection 24(1) of FOIP. Subsection 24(1) of FOIP is not exhaustive. To be personal information, the information must be: 1) about an identifiable individual; and 2) personal in nature (*Guide to FOIP*, Ch. 6, p. 32).

[23] Information is about an identifiable individual if the individual can be identified from the information; or if the information, when combined with information otherwise available, could reasonably be expected to allow the individual to be identified (*Guide to FOIP*, Ch. 6, p. 32).

[24] "Personal in nature" means the information must reveal something personal about the identifiable individual (*Guide to FOIP*, Ch. 6, p. 32).

[25] In its submission, WCB argued that the DiSC profile does not qualify as "personal information". It argued the following:

> The information contained in the profile assessment does not constitute personal information per s. 24(1) of FOIPP. The information does not fall under s. 24(1)(a), (b), (d), (e), (f), (g), (h), (i), (j), or (k)(ii) of FOIPP. Notably, the profile assessment includes, in various places throughout the assessment, the first name of the individual to whom the assessment relates. Arguably then, the profile assessment may constitute personal information per s. 24(1)(k)(i), where the name appears alongside information such as: "you have an S style. You are likely a cooperative person. Conflict is probably difficult for you. Most likely, you're fairly comfortable working quietly behind the scenes" (note that this are all direct quotes taken from a profile assessment). This begs the question if information such as "you have an S style. You are likely a cooperative person. Conflict is probably difficult for you. Most likely, you're fairly comfortable working quietly behind the scenes" constitutes personal information. This information in particular does not fall under s. 24(1)(a), (b), (d), (e), (f), (g), (h), (i), (j), or (k) of FOIPP. Recognizing that the list provided for in subsection of s. 24(1) of FOIPP, is not meant to be exhaustive, WCB has asked itself the following questions:
>
> > (i) **Is there an identifiable individual?** Identifiable individual means that it must be reasonable to expect that an individual may be identified if the information was disclosed. By way of example, it is not reasonable to expect that an individual may be identified by information such as "you have an S style. You are likely a cooperative person. Conflict is probably difficult for you. Most likely, you're fairly comfortable working quietly behind the scenes"

> (ii) **Is the information personal in nature?** Personal in nature means that the information reveals something personal about the individual. Arguably the above examples ("You are likely a cooperative person. Conflict is probably difficult for you. Most likely, you're fairly comfortable working quietly behind the scenes" may reveal something personal about the individual.
>
> Pursuant to the FOIPP guide, specifically chapter 6, however, to constitute personal information, both questions must be answered in the affirmative. Because WCB has concluded that the information could not be reasonably used to identify an individual, it does not constitute personal information pursuant to FOIPP. Therefore, because the name of the individual does not appear with other personal information, the use of the name of the individual does not constitute personal information pursuant to s. 24(1)(k)(i) of FOIPP. Because the WCB has concluded that the information contained in the profile assessment does not constitute personal information, there was no privacy breach with WCB's use of the profile assessment. In the event there is a disagreement as to whether the information was personal information, please see the response of WCB's Privacy Officer in the email correspondence between [Complainant's name] and the Privacy Officer that was forwarded to you on July 4, 2023. Specifically, please see the Privacy Officer's analysis that was sent to [Complainant's name] on May 4, 2023 at 8:43 am.

[26] I disagree with WCB's arguments. Personal information is clearly present in this matter. The "Everything DiSC Workplace Profile" assessment requires users to enter demographic information such as residence, gender, age, education, job, industry, and race or ethnicity. It also requires users to enter the degree to which users agree with statements presented to them. After entering the information, a DiSC profile is generated that describes the user's DiSC style. I find that such information qualifies as "personal information" as defined by subsections 24(1)(a), (b), and (k) of 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;
>
> ...
> (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.

[27] I add that in WCB's arguments quoted above, WCB referenced its email dated May 4, 2023 for further arguments as to whether there is personal information involved. In this email, WCB appears to confirm there is personal information. WCB identifies section 28 and subsection 29(2)(l) of FOIP as its authority "to collect and use personal information of its employees for the purpose of management, audit and administration of personnel." By citing section 28 and subsection 29(2)(l) of FOIP, then WCB is acknowledging that personal information is involved in this matter. I find that personal information is involved in this matter.

[28] Since personal information is involved in this matter, I will continue with my analysis.

b. Was there authority for WCB to collect the personal information?

[29] "Collection" means to bring or come together; assemble; accumulate; obtain personal information from any source by any means (*Guide to FOIP*, Ch. 6, p. 123).

[30] As described in the background of this Investigation Report, staff within the Prevention Department entered information into the "Everything DiSC Workplace Profile" assessment in order to determine each of their "DiSC styles". Therefore, WCB was collecting information from its employees via the assessment.

[31] Government institutions must only collect personal information in accordance with section 25 of FOIP. Section 25 of FOIP provides:

> **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.

[32] "Purpose" means the purpose for which personal information was obtained or compiled, the object to be attained or the thing intended to be done, e.g., the administration of a program, the provision of a service or other activity. The purpose of a collection means the reason(s) the personal information is needed and the use(s) that the government institution will make of the personal information (*Guide to FOIP*, Ch. 6, p. 123).

[33] "Relates to" should be given a plain but expansive meaning. The phrase should be read in its grammatical and ordinary sense. There is no need to incorporate complex requirements (such as "substantial connection") for its application, which would be inconsistent with the plain unambiguous meaning of the words of the statute. "Relating to" requires a purpose with some connection to an existing or proposed program or activity of the government institution (*Guide to FOIP*, Ch. 6, p. 124).

[34] "Existing" means that the program or activity must be in place at the time the personal information is collected (*Guide to FOIP*, Ch. 6, p. 124).

[35] "Proposed" means something offered for consideration or acceptance; a suggestion. To put forward an idea or plan for consideration. In this context, it means the personal information was collected for a purpose relating to a program that is at the stage of being proposed but not yet existing (*Guide to FOIP*, Ch. 6, p. 124).

[36] "Program" means formally recognized activities or functions designed to deliver specific services that are related to a specific subject matter or topic. Programs do not refer to computer programs (*Guide to FOIP*, Ch. 6, p. 124).

[37] "Activity" is an individual action designed to assist in carrying out an operating program. For example:

- Skills training assists a social assistance recipient to return to the workforce and is one facet of the social assistance program.
- Driver testing is required in determining eligibility for a driver's licence as part of the driver-licensing program.

(*Guide to FOIP*, Ch. 6, p. 124).

[38] The government institution must have a demonstrable need for the personal information such that the operating program or activity would not be viable without it.

[39] In its submission, WCB asserted it did not collect the Complainant's personal information. It said:

> No, WCB did not collect personal information. The WCB employee had the **choice** to enter their personal information by way of filling out the "Demographics" portion of the DiSC questions. Notably, though, WCB did not collect this information. This information, if entered, was used to populate a profile Assessment. WCB did not, at any time, have or obtain access to any portion of the DiSC questions, including the Demographic section, if the employee chose to fill out this section. WCB therefore did not collect personal information, because it did not obtain any personal information that could have been used by the WCB employee to populate their profile assessment. Conclusively then, WCB is of the view that a privacy breach did not occur in this regard.
>
> [Emphasis in original]

[40] Whether the Complainant had a choice or not, WCB did collect the Complainant's personal information. Had it not, then the manager from WCB's Organization Development would not have been able to send the Complainant's DiSC profile on May 25, 2022, nor would WCB have been able to list each staff member's name (including the Complainant's) in the six-page "Prevention DiSC Close-Out Report".

[41] Perhaps WCB was asserting that the Complainant consented to WCB collecting their personal information. However, there is no consent requirement for collection of personal information in FOIP. In Investigation Report F-2010-001, the former Information and Privacy Commissioner said the following:

> [43] In Canada, we now have 27 years of experience with public sector privacy laws. Those public sector laws however are not and have not been consent based. There is provision for consent but obtaining consent is the exception and not the prevailing practice when it comes to 'use' or 'disclosure'. **There is no consent requirement for 'collection' of personal information. The limiting statutory requirement for collection is that "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."** The experience in Canada with public sector privacy laws is that the greatest part of use or disclosure by public bodies would be founded on the power to use or disclose without consent if the use or disclosure is "for the purpose for which the information was obtained or compiled, or for a use that is consistent with that purpose". In addition, there are no less than 22 prescribed circumstances under which personal information can be used or disclosed by any government institution without consent of the individual. The reason is that government institutions require a vast amount of personal information from citizens to provide the services that those citizens expect. This includes the operation of schools, hospitals, social services and countless other services. To require express consent every time a public body collected, used or disclosed such personal information would likely be unwieldy, inefficient and cumbersome not to mention expensive.
>
> [Emphasis added]

[42] Earlier, I said that for a government institution to collect personal information pursuant to section 25 of FOIP, the government institution must have a demonstratable need for the personal information such that the operating program or activity would not be viable without it. Based on the materials provided to my office, I find that WCB has not demonstrated it had authority under section 25 of FOIP to collect the Complainant's or any other employee's personal information. As such, I find a privacy breach occurred.

[43] Because I found that WCB has not demonstrated it had authority under section 25 of FOIP to collect personal information, it cannot establish that it had authority to use it. I would nonetheless like to address the matter of use as it may assist WCB in understanding the "use" provisions in FOIP.

[44] "Use" indicates the internal utilization of personal information by a government institution and includes the sharing of the personal information in such a way that it remains under the control of the government institution (*Guide to FOIP*, Ch. 6, p. 171).

[45] As described in the background of this Investigation Report, an Assistant Director with the Prevention Department sent an email with the six-page report entitled "Prevention DiSC Close-Out Report". The report contained a diagram that lists each staff member's name and their "DiSC style". I find that WCB has "used" the personal information.

[46] In WCB's email dated May 4, 2023 to the Complainant, WCB cited section 28 and subsection 29(2)(l) of FOIP. Section 28 of FOIP is the "use" provision that sets out the circumstances in which a government institution is authorized to use personal information. It says:

> **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).

[47] Since WCB cited subsection 29(2) of FOIP in its email, then it appears that WCB is saying subsection 28(b) of FOIP authorizes its "use" of personal information. Page 177 of Chapter 6 of my office's *Guide to FOIP* explains subsection 28(b) of FOIP is for the use of personal information by a government institution (such as WCB) disclosed to it by another government institution. It explains as follows:

> Subsection 28(b) of FOIP permits a government institution to use personal information that has been disclosed to it by another government institution under subsection 29(2) of FOIP.
>
> Where government institution "A" has received personal information from government institution "B" under subsection 29(2) of FOIP, government institution "A" may use that information for the purpose for which it was disclosed by government institution "B".
>
> Without this provision, a government institution would be unable to use personal information which other government institutions are authorized to disclose to them. In appropriate circumstances, subsection 28(b) of FOIP can reduce the number of times an individual must provide the same personal information to government institutions and can reduce the cost of gathering personal information required by more than one government institution.

[48] Since the "personal information" at issue in this matter isn't personal information disclosed to WCB by another government institution, then WCB cannot rely on subsection 28(b) of FOIP as its authority for the use of personal information.

[49] Since a privacy breach has occurred, I recommend that WCB take steps to respond to the privacy breach, including the best practice steps outlined from pages 6 to 10 described in my office's resource *Privacy Breach Guidelines for Government Institutions and Local Authorities*.

[50] I recommend that WCB apologize to the Complainant for breaching their privacy.

[51] I recommend that WCB discontinue using any of the personal information it has collected from the DiSC assessment. This includes recovering any of the personal information that has been distributed to WCB staff as much as possible as part of the "containment" step as described in my office's *Privacy Breach Guidelines for Government Institutions and Local Authorities*.

[52] If WCB plans to use the "Everything DiSC workplace training" in the future, I recommend that WCB conduct a comprehensive privacy impact assessment (PIA) before doing so. Through the PIA process, WCB should sort out its authority for collecting, using, and/or disclosing personal information. The PIA process will also ensure WCB is meeting its duties under FOIP, including informing individuals of the purpose for collecting personal information pursuant to subsection 25(2) of FOIP and that appropriate safeguards are in place. Safeguards can include ensuring proper policies and procedures are in place so that personal information is collected, used, and/or disclosed only on a need-to-know basis. I also note that WCB had referred the Complainant to a third party's "Data Privacy" terms and privacy policy. WCB should not be relying on any third party's privacy policies as they may likely be inadequate in meeting WCB's obligations under FOIP.

III FINDINGS

[53] I find that personal information is involved in this matter.

[54] I find that WCB has not demonstrated it had authority to collect the Complainant's personal information, and so any subsequent use was also not authorized.

[55] I find that a privacy breach has occurred.

IV RECOMMENDATIONS

[56] I recommend that WCB take steps to respond to the privacy breach, including the best practice steps outlined from pages 6 to 10 described in my office's resource *Privacy Breach Guidelines for Government Institutions and Local Authorities*

[57] I recommend that WCB apologize to the Complainant for breaching their privacy.

[58] I recommend that WCB discontinue using any of the personal information it has collected from the DiSC assessment. This includes recover any of the personal information that has been distributed to WCB staff as much as possible as part of the "containment" step as described in my office's *Privacy Breach Guidelines for Government Institutions and Local Authorities*.

[59] If WCB plans to use the "Everything DiSC workplace training" in the future, I recommend that WCB conduct a comprehensive privacy impact assessment (PIA) before doing so.

Dated at Regina, in the Province of Saskatchewan, this 22nd day of August, 2023.

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