

**SASKATCHEWAN
INFORMATION AND PRIVACY COMMISSIONER**

REVIEW REPORT 034/2014

Saskatchewan Workers' Compensation Board

Summary: The Applicant submitted an access to information request to the Workers' Compensation Board (WCB). WCB responded by providing the Applicant with some of the records but cited subsections 15(1)(c), 17(1)(b)(i), 21, 29(1) and 31(2) of *The Freedom of Information and Protection of Privacy Act* (FOIP) as its reason for withholding remaining portions of the records. The Applicant appealed to the Information and Privacy Commissioner (IPC). The IPC found that WCB appropriately applied subsections 15(1)(c) and 29(1) of FOIP to withhold portions of the records. However, he found that WCB did not demonstrate that subsections 17(1)(b)(i), 21, and 31(2) of FOIP applied. The IPC recommended that WCB continue to withhold certain portions of the records but to also release to the Applicant her own personal information and to where the IPC found no exemptions apply.

I BACKGROUND

[1] On January 16, 2014, the Saskatchewan Workers' Compensation Board (WCB) received an access to information request for the following records:

All records in the possession of the WCB, whether original documents or copies, whether created by or received by the WCB, as it related to my personal information.

[2] WCB sought further clarification from the Applicant regarding the records the Applicant was seeking. Based on WCB's February 24, 2014 response to the Applicant's request, those records were clarified as follows:

Communications between WCB and OH&S relating to you, including any reports from WCB to OH&S.

Communications between Prevention and HR relating to you, including any reports from Prevention to HR.

- [3] In WCB's February 24, 2014 response to the Applicant, WCB advised that it was denying access to portions of the record pursuant to subsections 15(1)(c), 17(1)(b), 21, 29(1) and 31(2) of *The Freedom of Information and Protection of Privacy Act* (FOIP).
- [4] On March 14, 2014, my office received a request for review from the Applicant.
- [5] In letters dated April 8, 2014, my office notified both parties of its intention to conduct a review. My office requested WCB provide a copy of the record, index of records (Index) and submission in support of the above exemptions.
- [6] On April 29, 2014, my office received a copy of the record and the Index from WCB. WCB advised in its April 24, 2014 letter accompanying these materials that its index was to be considered their submission.

II RECORDS AT ISSUE

- [7] The records at issue consist of 36 pages.
- [8] Pages 1 through 6 of the record contain email communications between WCB employees. WCB withheld these records relying on subsections 17(1)(b)(i), 21, 29(1) and 31(2) of FOIP.
- [9] Pages 7 through 36 of the record contain letters, a report and handwritten notes regarding an investigation. Pages 7 through 11 of the record were withheld by WCB relying on subsections 15(1)(c), 21 and 29(1) of FOIP. Pages 12 through 36 were withheld relying on subsections 15(1)(c), 21, 29(1) and 31(2) of FOIP.

III DISCUSSION OF THE ISSUES

- [10] WCB is a "government institution" pursuant to subsection 2(1)(d)(ii) of FOIP.

1. Does subsection 15(1)(c) of FOIP apply?

[11] Subsection 15(1)(c) of FOIP is a discretionary exemption and provides:

15(1) A head may refuse to give access to a record, the release of which could:

...

(c) interfere with a lawful investigation or disclose information with respect to a lawful investigation;

[12] WCB applied subsection 15(1)(c) of FOIP to pages 7 through 36 of the record.

[13] The criterion that must be met in order for subsection 15(1)(c) of FOIP to apply is as follows:

- i. Do the public body's activities qualify as "lawful investigation" under the Act?
- ii. One of the following must exist:
 - a. The release of information would interfere with a lawful investigation, or
 - b. The release of information would disclose information with respect to a lawful investigation.

[14] The following is my analysis.

i. Do the public body's activities qualify as "lawful investigation" under the Act?

[15] A lawful investigation is an investigation that is authorized or required and permitted by law. This investigation was permitted through section 36 of *The Occupational Health and Safety Regulations, 1996*. Therefore, I find the WCB has met the first part of this test.

ii. Would disclosure interfere with the lawful investigation, or would the disclosure reveal information with respect to a lawful investigation?

[16] Pages 7 to 36 of the records contain information pertaining to a lawful investigation. Therefore, I find that this part of the test is met.

[17] The information found on these pages is directly related to the lawful investigation undertaken by WCB pursuant to section 36 of *The Occupational Health and Safety Regulations, 1996*. Therefore I find that WCB has met the second part of this test.

[18] As both parts of the test is met, I find that WCB has appropriately applied this test to pages 7 through 36 of the records and has authority to withhold the records pursuant to subsection 15(1)(c) of FOIP.

2. Does subsection 17(1)(b)(i) of FOIP apply?

[19] Subsection 17(1)(b)(i) of FOIP is a discretionary exemption and provides:

17(1) Subject to subsection (2), a head may refuse to give access to a record that could reasonably be expected to disclose:

...

(b) consultations or deliberations involving:

(i) officers or employees of a government institution;

[20] I will consider subsection 17(1)(b)(i) of FOIP for pages 1 through 6 of the record.

[21] A consultation occurs when the views of one or more officers or employees of a government institution are sought as to the appropriateness of a particular proposal or suggested action. A deliberation is a discussion of the reasons for and against an action by the persons described in the situation.

[22] The information on pages 1 through 6 is emails about a meeting that the employees are scheduling. Neither the definition for consultation nor deliberation describes the contents of pages 1 through 6 of the record. I find that WCB does not have authority to withhold release of these records under subsection 17(1)(b)(i) of FOIP.

3. Does subsection 29(1) of FOIP apply?

[23] Subsection 29(1) of FOIP is a mandatory exemption and provides:

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.

[24] I will consider subsection 29(1) of FOIP for pages 1 through 6 of the record.

[25] For subsection 29(1) of FOIP to apply, the information in question must first constitute “personal information” of someone other than the Applicant pursuant to subsection 24(1) of FOIP. Subsection 24(1) of FOIP defines what constitutes personal information.

[26] A review of the information found on pages 1 through 6 of the record primarily discusses plans to have a meeting with the Applicant. Some of the emails contain personal information of the Applicant. This information should be released.

[27] Other portions of the emails could qualify as personal information of persons other than the Applicant. I recommend that WCB withhold such information pursuant to subsection 29(1) of FOIP but release the remainder of the information.

4. Does section 21 of FOIP apply?

[28] Section 21 of FOIP is a discretionary exemption and provides:

21 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.

[29] WCB applied section 21 of FOIP to all of the 36 pages of the record.

[30] The following test must be met in order for section 21 of FOIP to apply:

- i. There must be a reasonable expectation of harm;

- ii. The harm must constitute damage or detriment and not mere inconvenience;
- iii. Must be a causal connection between disclosure and the anticipated harm.

[31] WCB has not provided enough information to show a causal connection between the disclosure of all pages of the record and the anticipated harm. Therefore, I find that section 21 of FOIP does not apply to the records.

5. Does subsection 31(2) of FOIP apply?

[32] Subsection 31(2) of FOIP is a discretionary exemption and provides:

31(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.

[33] I will consider subsection 31(2) of FOIP for pages 1 through 6 of the record.

[34] The following two criterion must be met in order for subsection 31(2) of FOIP to be found to apply:

- 1) The personal information must be evaluative or opinion material compiled solely for the purposes of determining the individual's suitability, eligibility or qualifications for employment or for the awarding of contracts and other benefits by the government institution, and
- 2) The personal information must have been provided explicitly or implicitly in confidence.

[35] The information found on pages 1 through 6 is primarily discussions about a meeting. The information does not fit the purpose individual suitability, eligibility or qualification for employment or the awarding of contracts or other benefits.

IV FINDINGS

- [36] I find that WCB appropriately applied subsection 15(1)(c) of FOIP to withhold pages 7 through 36 of the record.
- [37] I find that WCB has not demonstrated that subsection 17(1)(b)(i) of FOIP applies to pages 1 through 6 of the record.
- [38] I find that WCB has not demonstrated that section 21 of FOIP applies to the record.
- [39] I find that WCB appropriately applied subsection 29(1) of FOIP to some portions of pages 1 through 6 of the record.
- [40] I find WCB has not demonstrated that subsection 31(2) applies to pages 1 to 6 of the record.

V RECOMMENDATIONS

- [41] I recommend that WCB continue to withhold pages 7 through 36 of the record pursuant to subsection 15(1)(c) of FOIP.
- [42] I recommend that WCB release the Applicant's personal information found on pages 1 to 6.
- [43] I recommend that WCB withhold personal information that belongs to individuals other than the Applicant found on pages 1 through 6 pursuant to subsection 29(1) of FOIP and release the remainder of the information found on these pages.

Dated at Regina, in the Province of Saskatchewan, this 10th day of February, 2015.

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