

**NORTHWEST TERRITORIES  
INFORMATION AND PRIVACY COMMISSIONER  
Review Report 18-192**

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## **BACKGROUND**

This complaint involves an allegation of a breach of the Complainant's privacy. It is his contention that the Workers' Safety and Compensation Commission (WSCC), collected more information than was authorized by him and disclosed that information contrary to the *Access to Information and Protection of Privacy Act*.

The Complainant was involved in a workplace incident that resulted in his injury. About six months after the incident, the Complainant began to show signs of PTSD, which he attributed to the accident, and had to take extra time off work because he was experiencing panic attacks. The Complainant made a claim to the WSCC for compensation for the PTSD. Before the WSCC would accept his claim, they required him to undergo an independent evaluation by a specialist of their choosing. In order to accommodate this evaluation, the WSCC requested the Complainant's consent to "obtain 5 years of medical records pertaining to pre-injury psychological issues/ diagnoses". They also asked him to fill out "a consent form for each of the doctors and facilities where you received treatment for pre-existing condition". While in the appointment with the specialist, when the specialist confronted the Complainant with information about a completely unrelated trauma which pre-dated the five year time frame, it became apparent that, notwithstanding the consent for five years of historical health records, the WSCC had instead collected and provided the specialist with records much more dated than that. The Complainant felt ambushed and became very upset and flustered, to the point that the specialist ended the appointment because he realized that the patient's trust had been lost. As a result, the Complainant was denied WSCC coverage.

When the Complainant took this matter up with the WSCC, he was told that the Worker's Report of Injury, signed at the time his initial claim was filed was sufficient consent for the collection of as much information as the WSCC felt was required to assess the claim, notwithstanding the secondary specific consent for the collection/disclosure of only five years of medical records. He was informed that the second request for consent to the collection, use and disclosure of only five years of medical records was "mostly to provide the health care worker with my fax request".

### **Explanation from the WSCC**

The WSCC takes the position that, notwithstanding the *Access to Information and Protection of Privacy Act*, the *Workers' Compensation Act* (WCA) provides the WSCC with the authority to collect and appropriately disclose the claimant's personal medical information in the adjudication and on-going management of their claims for compensation. They argue that the claimant's consent allowing the WSCC to collect medical information to administer a claim for compensation related to the PTSD, including the disclosure of that information to medical personnel, is found in the Workers' Report of Injury required to be signed in order to make a claim. The consent reads as follows:

The WSCC may use this information for the administration of legislation under our authority, including the Workers' Compensation Acts, the Safety Acts, and/or the Mine Health and Safety Acts, and their associated Regulations, and to contact you in relation to requirements under the relevant legislation.

The WSCC may only use my personal information, as provided here for the sole purpose of conducting an investigation for my compensation claim. The WSCC may gather more information on my work incident and medical and work history to administer my claim for compensation. For that purpose only the WSCC may disclose some personal information to

my employer, medical personnel, and other relevant third parties.  
Having read the requirements above, I understand and authorize the WSCC to collect and provide such information from all necessary sources.

In this case, when the claim for PTSD arose, the WSCC had the Complainant sign another consent as follows:

I, [Claimant], give my consent to the Workers' Safety and Compensation Commission (WSCC) to discuss/release information related to my WSCC claim to the following: [Named medical facility].

A second consent was signed for a specified practitioner.

They note that the authority to collect and disclose a claimant's medical information is drawn from various sections of the WCA including:

Section 30 - The Commission may require a claimant, an employer or a health care provider to provide any information that it considers necessary for it to determine a claim for compensation.

Section 24(1) - The Commission may require a worker claiming compensation to present himself or herself for one or more medical examinations in the manner and at the times and places that the Commission may require.

They submit that when the claimant's previous medical records were requested, the additional "Consent for Release of Information" required by the WSCC was provided to the medical centres along with the disclosure consent found on the signed "Worker's Report of Injury". This was done, they say, in order to expedite the processing of the request by the medical centres. They argue that the authority of the WSCC to collect and disclose this claimant's information did not hinge on the additional "Consent for

Release of Information” form but could be found in the original consent provided by the Complainant when he made his compensation claim to cover the original physical injury.

They acknowledge that when the Complainant was asked to sign the second consents, the Case Manager made statements “insinuating that the medical information collected would only refer to events only within the previous 5 years”. They agree that it was “regrettable” that the claimant was not prepared for the events that unfolded at his specialist’s meeting. They argue, however, that “it is reasonable to assume that information pertaining to the medical appointments attended by an individual within the previous 5 years would contain, reference, and moreover require relevant medical information from appointments, diagnoses and treatments that took place previously”.

They note:

The decision to disclose the medical information from 2015 (in addition to the historically relevant information it references and includes from 2008/09) was done in order to allow the health care provider to ascertain an accurate diagnosis for [the Complainant], which was required for the further adjudication and management of [the Complainant’s] claim for compensation with the WSCC.

## **DISCUSSION AND RECOMMENDATIONS**

The *Access to Information and Protection of Privacy Act* (ATIPPA) has, as one of its purposes, “preventing the unauthorized collection, use and disclosure of personal information”. Part II of the Act outlines the circumstances in which public bodies, including the WSCC can collect, use and disclose personal information.

Section 40 prohibits the collection of personal information unless:

- (a) the collection of the information is expressly authorized by an enactment;
- (b) the information is collected for the purposes of law enforcement; or

- (c) the information relates directly to and is necessary for
  - (i) an existing program or activity of the public body, or
  - (ii) a proposed program or activity where collection of the information has been authorized by the head with the approval of the Executive Council

I am completely satisfied that the WSCC is authorized pursuant to section 40(a) to collect personal information for the purpose of administering its legislated programs.

Section 43 of the ATIPPA sets out how public bodies can use the personal information that it collects, specifically:

- a) for the purpose for which the information was collected or compiled, or for a use consistent with that purpose;
- b) if the individual the information is about has identified the information and consented, in the prescribed manner, to the use; or
- c) for a purpose for which the information may be disclosed to that public body under Division C of this Part

Section 48 outlines the circumstances in which personal information can be disclosed by a public body, including:

- a) for the purpose for which the information was collected or compiled or for a use consistent with that purpose;
- b) where the individual the information relates to has identified the information and consented, in the prescribed manner, to its disclosure;
- ...
- u) for any purpose in accordance with any Act that authorizes or requires the disclosure;

Again, I am satisfied that the WSCC was authorized to both use and disclose such of the Complainant's personal information as was necessary for the purposes of administering its programs under the WCA.

The issue here is about process. While the collection and disclosure of the some of the Applicant's personal information may have been authorized, this does give the WSCC *carte blanche* to collect everything in an individual's medical records nor does it absolve the WSCC from following best practices and procedures when dealing with personal information. This is emphasized when the information being used or disclosed is personal health information, which can be particularly sensitive. The WCA allows for the collection of information as necessary for it to determine "a claim for compensation". This implies that only information related to the claim can be collected or disclosed. While there will undoubtedly be some elasticity to what that information might include, there must be a reasonable nexus to the claim made for information to be collected. Collection of personal health information should be focussed and limited. There should not, for example, be collection of records in relation to pregnancies or mental health history where the issue is a broken leg. The requests for information must be focussed and specific in order for the collection to be authorized under either the WCA or the ATIPPA, or for that matter, under the authority of the consents signed.

Perhaps more importantly, there is a very high onus on the WSCC to fully and completely explain what information they will collect, how it will be used and to whom it will be disclosed. This is particularly so because the WCA **requires** employees to report employment related injuries or diseases to the WSCC (Section 17). In order to make such a report, the worker **must** complete and sign the Workers' Report of Injury which further **requires** the employee to sign a very general "consent" to the collection, use and disclosure of personal information. Further, by virtue of section 19, anyone who files a report of injury is **deemed** to have made a claim for compensation, whether or not that was the wish or intention of the worker. Even where an employee wishes to make a claim, he cannot do so without signing the very general and therefore expansive consent to the collection, use and disclosure of his personal information and his

personal health information. In these circumstances, the consent attached to the Report of Injury can never be relied on as true, knowledgeable consent. It is a requirement, not a choice. Consent requires choice and understanding to be effective.

In this case, a second set of consents was requested of the Complainant. It was clear to both the Complainant and the WSCC employee obtaining it, that the consent was to cover a period of five years only. This is the basis upon which the consent was signed by the Complainant. I do not accept the WSCC's argument that "it is reasonable to assume that information pertaining to the medical appointments attended by an individual within the previous 5 years would contain, reference, and moreover require relevant medical information from appointments, diagnoses and treatments that took place previously". It is not in any way reasonable to make this assumption when speaking from the perspective of the claimant. Rather, the reasonable assumption to make is that if a consent for the disclosure of five years of information is what is requested, that is what will be collected.

Nor should the WSCC be asking for signed consent forms simply to make their communication process with medical staff easier. Consents have real legal consequences and should, therefore, be treated with the attention to detail and formality that such a waiver of personal rights deserves. In this case, when the Complainant brought his concerns to the WSCC, he was told that "the consent form you signed was mostly to provide to the health care provider with my fax request with a timeline that I was looking for" and he was referred back to the "Worker's Report of Injury" signed at the time of the original claim. When such a consent is obtained (i.e. at the time of submitting a "Worker's Report of Injury" and when any additional or further consents are obtained), the consent should be explained fully to the claimant and there should be some way to verify that the claimant actually understands what he is providing with such consent. Notwithstanding the legislated authority of the WSCC to collect, use and disclose personal information, the organization requires written consents to obtain information from third parties because those third parties are unlikely to provide information without those consents. So despite the fact that the WSCC is authorized to

collect, use and disclose personal information and personal health information about claimants, it still needs the claimant's informed consent for that collection, use and disclosure.

I therefore **recommend** that the WSCC:

- a) take steps to ensure that claimants are fully aware of the import and consequences of providing consent to the collection, use and disclosure of personal information and personal health information;
- b) take steps to allow for a claimant to choose to limit his/her consent to the collection and disclosure of personal information and personal health information, such that each collection or disclosure would require a separate and distinct written consent;
- c) create a policy/procedure whereby claimants are, where possible, advised when the WSCC intends to use the general consent provided at the time of the "Worker's Report of Injury" and for what purpose;
- d) that all consent forms required after the initial "Worker's Report of Injury" be revised so as to specify the extent of the consent being provided, including both the nature of the records involved and the time line involved;
- e) that care be taken to respect the specific scope of all consents and that the terms of more specific consents, where they exist, be applied over more general consents.

While none of these recommendations will assist the Complainant in this case, it does serve to provide guidance for the future. The WCA was established so as to protect workers. It is, therefore, incumbent upon the WSCC to ensure that the most privacy protective procedures be used to avoid the inappropriate collection and/or disclosure of



sensitive personal information. The consent process must be far more transparent and claimants must be given the tools to understand how much of their right to control the collection, use and disclosure of their personal information is being forfeited when making a claim for compensation.

Elaine Keenan Bengts  
**Information and Privacy Commissioner**