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PRIVACY COMPLAINT REPORT

PRIVACY COMPLAINT NO. MC-020003-1

Toronto Catholic District School Board

August 14, 2002



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PRIVACY COMPLAINT NO. **MC-020003-1**

MEDIATOR: **Alex Kulynych**

INSTITUTION: **Toronto Catholic District School Board**

SUMMARY OF COMPLAINT:

The complainant is a teacher employed by the Toronto Catholic District School Board (the Board). The complainant suffered an injury during the course of her duties. The school where the injury occurred provided an Accident Investigation Report to the Board's WSIB Services Unit. That Unit then forwarded prescribed documentation to the Workplace Safety and Insurance Board (the WSIB) to register the claim and begin the adjudication process.

The Board provided this office with the following explanation with respect to its arrangements with the WSIB:

[t]he [Board] is a Schedule 2 employer under the WSIB and self-insures for injuries to staff for this employee's bargaining unit. We do, however, pay a management fee to the WSIB and rely on their expertise to determine validity and extent of injuries, length of recovery time, etc. It is the WSIB that determines what benefits, if any, the [Board] is required to pay to such an employee. While we do self-insure, we are still required to follow the provisions of the Workplace Safety and Insurance Act, 1997 (WSIA, 1997) and the regulations therein.

The day after the injury, the Board's WSIB Return to Work Officer contacted the complainant to gather preliminary information. On the same day, the Board forwarded documentation to the complainant's family doctor. Included was a Functional Abilities Form, to be completed by the doctor, which assists the Board and the WSIB to develop a modified work plan so that the complainant can return to work in a safe and timely manner.

One week after the injury, the Return to Work Officer contacted the complainant's doctor who informed the Officer that he, the doctor, had not completed the Functional Abilities Form because the complainant was not ready to return to work.

After the initial contact, the Return to Work Officer was unsuccessful in contacting the complainant until the complainant called the Board approximately two and a half weeks later to discuss her claim. During the course of the conversation, the complainant informed the Return to Work Officer that her father had passed away, apparently to explain why she could not be reached. Her father had passed away a few days after her injury.

The Return to Work Officer wrote to the WSIB that same day to advise that the complainant's family doctor was not prepared at that time to complete the Functional Abilities Form. The letter also informed the WSIB that the complainant's father had passed away. The Return to Work Officer explained in the letter that the Board had concerns about whether it was the complainant's physical/medical situation or the loss of her father that was delaying her return to work.

The complainant informed this office that she had learned of the disclosure after she had submitted a request for information under the *Act*. She feels that the Board should not have informed the WSIB of her father's death without her consent and furthermore, her father's passing was irrelevant to her WSIB claim. She asks that we investigate what she feels was a breach of her privacy.

DISCUSSION:

The following issues were identified as arising from the investigation:

ISSUE A: Is the information at issue "personal information" as defined in section 2(1) of the *Act*?

Section 2(1) of the *Act* states, in part:

"personal information" means recorded information about an identifiable individual, including,

- (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

Based on the above, I conclude that the information at issue is the personal information of the complainant.

Furthermore, section 2(2) of the *Act* reads:

Personal information does not include information about an individual who has been dead for more than thirty years.

Because the complainant's father passed away less than a year ago, section 2(2) of the *Act* has no application in this case. I conclude, therefore, that based on the introductory wording of the

definition of “personal information” in section 2(1) of the *Act*, the information at issue also contains the personal information of the complainant’s father.

In my view, the information at issue meets the definition of “personal information” found in section 2(1) of the *Act* and is the personal information of both the complainant and her father.

ISSUE B: Was the “personal information” disclosed in accordance with section 32 of the *Act*?

During the investigation of the complaint, I sought information from the WSIB, in addition to input from the complainant and the Board.

The complainant feels that her father’s passing and the injury she sustained at work are unrelated. She contends that the Board did not provide her with the legal basis for disclosing the information at issue and did not inform her of the disclosure when disclosure took place.

The Board’s position is that the disclosure to the WSIB of the information at issue was in accordance with the requirements of the *Workplace Safety and Insurance Act, 1997* (the *WSIA*); that it was the Board’s responsibility to forward all information that may be relevant to the evaluation and processing of the claim, including information that may have a bearing on the complainants timely and safe return to work. It was then up to the WSIB to determine what relevance, if any, the information had with respect to the claim.

The WSIB cites section 77 of the *WSIA* which requires a Schedule 1 or Schedule 2 (i.e., the Board) employer to notify the WSIB of a material change in circumstances in connection with the employer’s obligations under that Act.

The WSIB further states that under section 41 of the *WSIA*, an employer has an obligation to re-employ the injured worker. If there is a dispute between the worker and the employer over the worker’s ability to return to work, the WSIB makes the final determination. If the WSIB finds that the employer is in breach of its obligation to re-employ, the employer may be subject to penalties under their Act.

The WSIB advises that in this case, there was disagreement between the complainant and the Board with respect to the suitability of the modified work offered by the Board. According to the WSIB, the adjudicator responsible for the complainant’s claim considered the information at issue to be relevant and material to the claim.

Section 32(e) of the *Act* states:

An institution shall not disclose personal information in its custody or under its control except,

For the purpose of complying with an Act of the Legislature or an Act of Parliament, an agreement or arrangement under such an Act or a treaty;

In Investigation Report I92-84M, the current Commissioner, an Assistant Commissioner at the time, wrote that the institution's Health and Safety Unit, which included a Workers' Compensation and Rehabilitation Division, was responsible for the administration of employees' WCB [now the WSIB] accident claims. She determined that:

In our view, section 133(1) of the WCA [Workers' Compensation Act] requires an employer to provide the WCB with any information respecting a claim which the WCB may require. Since it is the responsibility of the Unit to administer WCB accident claims, the Unit would be acting as the employer. As such, any disclosure of personal information by the Unit to the WCB would be in accordance with section 133(1) of the WCA and thus, would be in accordance with section 32(e) of the Act.

In the present case, the Board's WSIB Service Unit acts in the same capacity as the Unit in Investigation Report I92-84M. Furthermore, section 133(1) of the former *WCA* states in part that an employer shall: "in any case furnish details and particulars respecting any accident or claim to compensation as the Board [WCB] may require." Section 21(2) of the current *WSIA*, although not identically worded as section 133(1) of the former *WCA*, is equivalent in content and states: "The notice [from an employer] must be on a form approved by the Board and the employer shall give the Board such other information as the Board may require from time to time in connection with the accident."

I conclude, therefore, that the Board disclosed the complainant's personal information in accordance with section 32 of the *Act*, specifically section 32(e). In my view, the Board disclosed the complainant's personal information for the purpose of complying with an Act of the Legislature, specifically, the *WSIA*.

I further conclude, however, that the Board's disclosure of the complainant's father's personal information was not in accordance with section 32 of the *Act*. Section 32(e) allows for disclosure of the complainant's personal information, as a claimant under *WSIA* in the circumstances described above, but not for the disclosure of the personal information of other individuals. I can find no provision in section 32 which would allow for the disclosure of the father's personal information.

The Board may have referred to the complainant's family situation in more general terms; for example, that there had been a death in the complainant's family, without specifically identifying the deceased. In this way, the information at issue would contain only the complainant's personal information.

As mentioned above, the complainant was concerned that she learned of the Board's disclosure only after submitting a request under the *Act*. The Board has informed this office that it has initiated a process within its WSIB Return to Work Department of providing a copy to all employees of information about them sent to the WSIB. This practice by the Board addresses the complainant's concern.

CONCLUSIONS:

I have reached the following conclusions based on the results of my investigation:

- a) The information at issue meets the definition of “personal information” found in section 2(1) of the *Act* and is the personal information of both the complainant and her father,
- b) The complainant’s personal information was disclosed by the Board in accordance with section 32 of the *Act*,
- c) The Board’s disclosure of the complainant’s father’s personal information was not in accordance with section 32 of the *Act*.

RECOMMENDATION:

I encourage the Board to exercise caution in the future to ensure that only the claimant’s personal information is forwarded to the WSIB during the processing of a claim under the *WSIA*, unless section 32 of the *Act* allows otherwise.

The Board should, by November 14, 2002, provide this office with written confirmation that all staff within the Board’s WSIB Service Unit have been made aware of the need to forward only the claimant’s information to the WSIB when processing a claim under the *WSIA*, unless otherwise allowed under section 32 of the *Act*.

Alex Kulynych
Mediator

August 14, 2002