



OFFICE OF THE
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Order F15-38

WORKERS' COMPENSATION BOARD

Ross Alexander
Adjudicator

August 20, 2015

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Summary: An applicant requested records relating to a Workers' Compensation Board complaint filed by his adult daughter. WorkSafeBC disclosed some information to the applicant, but it withheld other information under s. 13 (policy advice or recommendations) and s. 22 (disclosure harmful to personal privacy) of FIPPA. The adjudicator determined that WorkSafeBC is required or authorized to refuse to disclose the withheld information under ss. 13 and 22 of FIPPA.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 13 and 22.

INTRODUCTION

[1] This inquiry relates to a request to the Workers' Compensation Board ("WorkSafeBC") for records regarding a claim for compensation filed by the applicant's adult daughter. The applicant's daughter has provided written authorization for the applicant to act on her behalf.

[2] WorkSafeBC disclosed some information to the applicant, but it withheld other information under s. 13 (policy advice or recommendations) and s. 22 (disclosure harmful to personal privacy) of the *Freedom of Information and Protection of Privacy Act* ("FIPPA"). WorkSafeBC also informed the applicant that some of the requested records were not in its custody or control, and it referred the applicant to the Workers' Compensation Appeal Tribunal.

[3] The applicant first complained to WorkSafeBC that it had failed to conduct an adequate search for records. He then brought his adequate search complaint to the Office of the Information and Privacy Commissioner (“OIPC”). The OIPC addressed this complaint, and closed its file on this issue. The applicant has since raised a number of concerns he has about adequacy of WorkSafeBC’s search for records. However, this adequate search issue does not form part of this inquiry.¹

[4] The applicant also requested a review of WorkSafeBC’s decision to withhold information under ss. 13 and 22 of FIPPA.

[5] During OIPC mediation, WorkSafeBC released additional information in the records, but it continued to withhold some information under ss. 13 and 22 of FIPPA. Mediation did not resolve the issues regarding the remaining information, and the applicant requested that this matter proceed to inquiry.

ISSUES

[6] The issues in this inquiry are as follows:

- a) Is WorkSafeBC authorized to refuse access to information because disclosure would reveal advice or recommendations under s. 13 of FIPPA?
- b) Is WorkSafeBC required to refuse access to information because disclosure would be an unreasonable invasion of third party personal privacy under s. 22 of FIPPA?

[7] WorkSafeBC has the burden of proof regarding s. 13, pursuant to s. 57(1) of FIPPA. The applicant has the burden of proof regarding s. 22, pursuant to s. 57(2).

DISCUSSION

[8] **Information in Dispute** – The only information in dispute in this inquiry is two excerpts contained in an email from a WorkSafeBC security manager to a WorkSafeBC senior manager in relation to why the applicant’s daughter (and the applicant on behalf of his daughter) did not have portal access to the daughter’s claim through WorkSafeBC’s website. The senior manager requested this information from the security manager, in order to enable him to respond to a telephone inquiry the applicant had made regarding this issue. One excerpt in the email is the security manager’s opinion, which WorkSafeBC is withholding under s. 13 of FIPPA. The other excerpt is the surname of an individual, which WorkSafeBC is withholding under s. 22 of FIPPA.

¹ OIPC Investigator’s Fact Report.

[9] **Preliminary Matters** – The applicant provided response and sur-reply submissions for this inquiry. However, they relate to his belief that WorkSafeBC has additional records that have not been “surrendered with reasons”. He does not make any submissions regarding ss. 13 or 22 of FIPPA.

[10] The only issues listed in the Notice of Inquiry are ss. 13 and 22 of FIPPA. Further, the OIPC Investigator’s Fact Report makes it clear that the adequate search issue is not at issue in this inquiry. In any event, only one page of disputed records (the email) has been put before me. The only issues within the scope of this inquiry are whether WorkSafeBC is required or authorized to refuse to disclose information in the email under ss. 13 and 22 of FIPPA. I therefore will not consider the adequate search issue.

Section 13

[11] As stated above, the information withheld under s. 13 is an excerpt in an email containing an opinion from a WorkSafeBC security manager to a WorkSafeBC senior manager in relation to why the applicant and his daughter did not have portal access to her claim filed through WorkSafeBC’s website.

[12] Section 13 of FIPPA authorizes public bodies to refuse to disclose policy advice or recommendations, subject to specified exceptions in s. 13(2). Section 13(1) states:

- (1) The head of a public body may refuse to disclose to an applicant information that would reveal advice or recommendations developed by or for a public body or a minister.

[13] In determining whether s. 13 applies, it is first necessary to establish whether disclosing the information “would reveal advice or recommendations developed by or for a public body or a minister”. If so, it is then necessary to consider whether that information is excluded from s. 13(1) because it falls within any of the categories of information listed in s. 13(2) of FIPPA.

[14] In this case, the information in dispute is clearly developed by and for a public body. Further, I find that the withheld information (*i.e.* the security manager’s opinion) would reveal advice to the senior manager. I therefore find that this excerpt falls under s. 13(1). I further find that it does not fall within any of the categories of information listed in s. 13(2) of FIPPA. I therefore find that WorkSafeBC is authorized to withhold this excerpt under s. 13 of FIPPA.

Section 22

[15] The information WorkSafeBC is withholding under s. 22 is the surname of an individual who was denied portal access through WorkSafeBC’s website. It is

not the name of the applicant, his daughter, a WorkSafeBC employee, or any individual with a connection to the applicant or his daughter's claim.

[16] Numerous orders have considered the approach to s. 22 of FIPPA, which states that a "public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy." This section only applies to "personal information" as defined by FIPPA. Section 22(4) lists circumstances where s. 22 does not apply because disclosure would not be an unreasonable invasion of personal privacy. If s. 22(4) does not apply, s. 22(3) specifies information for which disclosure is presumed to be an unreasonable invasion of a third party's personal privacy. However, this presumption can be rebutted. Whether s. 22(3) applies or not, the public body must consider all relevant circumstances, including those listed in s. 22(2), to determine whether disclosing the personal information would be an unreasonable invasion of a third party's personal privacy.

[17] FIPPA defines "personal information" as "recorded information about an identifiable individual other than contact information".² "Contact information" is defined as "information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual".

[18] WorkSafeBC acknowledges that it is possible disclosure may not lead to the identification of the third party, since it is the surname of a person who has no connection to the applicant. However, it submits that the name is still personal information.

[19] The only information withheld under s. 22 is a surname. However, in context, disclosure would reveal that this person had a WorkSafeBC claim, and that he or she dealt with WorkSafeBC's Kelowna office. In these circumstances, I find that this person is an identifiable individual, as the person's surname (particularly when combined with the WorkSafeBC claim and location information) would enable him or her to be identified. Further, I find that the surname is not contact information because it is not information to enable him or her to be contacted at a place of business. I therefore find that the withheld information is the personal information of a third party.

[20] For the remainder of the s. 22 analysis, WorkSafeBC submits that s. 22(4) does not apply, and that there is a presumption that disclosure would be an unreasonable invasion of personal privacy because s. 22(3)(a) (personal information relating to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation) and s 22(2)(d) (personal information relating to employment, occupational or educational history) apply. It submits that

² Schedule 1 of FIPPA.

ss. 22(3)(a) and (d) apply because disclosure of the surname would disclose that the individual has a WorkSafeBC claim, which would disclose that he or she suffered an injury arising out of his or her employment.

[21] For the factors under s. 22(2), WorkSafeBC submits the s. 22(2)(c) (personal information relevant to a fair determination of the applicant's rights) is not relevant because the withheld information does not involve the applicant's daughter's claim in any way. It submits that s. 22(2)(f) (personal information supplied in confidence) weighs against disclosure because WorkSafeBC collected information about the third party in confidence. It also submits that s. 22(2)(h) (disclosure that may unfairly damage the reputation of a person) applies because the withheld information not only discloses that the third party had a workplace injury, but also that he or she had dealings with WorkSafeBC's security department, which is not commonplace and could lead to embarrassing or inaccurate assumptions about the third party.

[22] The applicant provided no submissions regarding s. 22 of FIPPA.

[23] Based on my review of the materials before me, I find that none of the provisions in s. 22(4) apply to the withheld information. Further, WorkSafeBC provides a strong case for why s. 22 applies, while the applicant provided no materials on this issue. The applicant clearly has not met his burden of proof with respect to s. 22. I therefore find that s. 22 applies to the withheld information, and that WorkSafeBC is required to refuse to disclose it to the applicant because disclosure would be an unreasonable invasion of the third party's personal privacy.

CONCLUSION

[24] For the reasons given above, under s. 58 of FIPPA, I order that WorkSafeBC is:

- a) authorized to refuse to disclose the information withheld under s. 13 of FIPPA; and
- b) required to refuse to disclose the information withheld under s. 22 of FIPPA.

August 20, 2015

ORIGINAL SIGNED BY

Ross Alexander, Adjudicator

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