



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
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Order F14-44

WORKERS' COMPENSATION APPEALS TRIBUNAL

Elizabeth Barker, Adjudicator

October 3, 2014

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Summary: The applicant, on behalf of his adult daughter, requested access to records related to the daughter's claims and appeals before WCAT. WCAT refused to disclose some of the requested information under ss. 3(1)(b), 13 and 22 of FIPPA. The adjudicator determined that some of the records were outside the scope of FIPPA because they were communications and draft decisions of individuals acting in a quasi-judicial capacity, so s. 3(1)(b) applied. Further, WCAT was authorized under s. 13(1) to refuse disclosure of some of the information contained in the records because it was advice or recommendations developed by or for WCAT. The adjudicator also found that WCAT was required to continue to refuse to disclose all of the personal information withheld under s. 22(1).

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 3(1)(b), 13 and 22.

Authorities Considered: B.C.: Order 00-16, 2000 CanLII 7714 (BC IPC); Order 00-18, 2000 CanLII 7416 (BC IPC); Order 00-21, 2000 CanLII 10451 (BC IPC); Order 01-15, 2001 CanLII 21569 (BC IPC); Order 01-53, 2001 CanLII 21608 (BC IPC); Order 02-027, 2002 CanLII 42456 (BC IPC); Order 02-38, 2002 CanLII 42472 (BC IPC); Order 03-37, 2003 CanLII 49216 (BC IPC); Order 04-15, 2004 CanLII 34269 (BC IPC); Order F06-16, 2006 CanLII 25576 (BC IPC); Order F07-17, 2007 CanLII 35478 (BC IPC); Order F08-03, 2008 CanLII 13321 (BC IPC); Order F10-09, 2010 BCIPC 14 (CanLII); Order F10-15, 2010 BCIPC 24 (CanLII); Order F10-35, 2010 BCIPC 53 (CanLII); Order F11-16, 2011 BCIPC 22 (CanLII); Order F11-17, 2011 BCIPC 23 (CanLII).

Cases Considered: *M.N.R. v. Coopers and Lybrand*, [1979] 1 S.C.R. 495; *John Doe v. Ontario (Finance)*, 2014 SCC 36; *British Columbia (Attorney General) v. British Columbia (Information and Privacy Commissioner)*, 2004 BCSC 1597; *Provincial Health Services Authority v. British Columbia (Information and Privacy Commissioner)*, 2010 BCSC 931.

INTRODUCTION

[1] This inquiry concerns a request for emails and all other records relating to the applicant's adult daughter's claims and appeals before the Workers' Compensation Appeals Tribunal ("WCAT"). The applicant's daughter authorized the applicant to represent her in this inquiry.

[2] WCAT disclosed some information but refused to disclose other information under s. 3(1)(b) (records outside the scope of FIPPA), s. 13 (policy advice or recommendations), s. 14 (legal advice), s. 22 (disclosure harmful to personal privacy). The applicant requested that the Office of the Information and Privacy Commissioner ("OIPC") review WCAT's decision. During the review, WCAT released additional information, including all the records it had previously refused to disclose under s. 14. However, the issues regarding ss. 3(1)(b), 13 and 22 were not resolved, and the applicant requested that they proceed to inquiry under part 5 of FIPPA.

ISSUES

[3] The issues to be addressed in this inquiry are as follows:

1. Do some of the records fall outside the scope of FIPPA, pursuant to s. 3(1)(b), because they are personal notes, communications or draft decisions of a person acting in a judicial or quasi-judicial capacity?
2. Does s. 13 of FIPPA authorize WCAT to refuse to disclose information because disclosure would reveal advice and recommendations developed by or for WCAT?
3. Is WCAT required to withhold information under s. 22 of FIPPA because disclosure would be an unreasonable invasion of third party personal privacy?

[4] WCAT has the burden of proof, under s. 57(1) of FIPPA, to establish that s. 13 authorizes it to refuse to disclose the requested information. However, s. 57(2) of FIPPA places the burden on the applicant to establish that disclosure of personal information contained in the requested records would not unreasonably invade third party personal privacy under s. 22 of FIPPA. FIPPA is silent with respect to the burden of proof for s. 3(1)(b). Previous decisions have

held that, as a practical matter, it is in the interests of each party to provide arguments and evidence to justify its position on the issue.¹

DISCUSSION

[5] **Background**—WCAT is a tribunal established by the *Workers' Compensation Act*² (“WCA”) to decide appeals of decisions made by the Workers' Compensation Board (operating as WorkSafeBC), the public body that administers the British Columbia's workers' compensation system. WCAT has exclusive jurisdiction to inquire into, hear and determine all matters and questions of fact, law and discretion arising or required to be determined in an appeal of WorkSafeBC decisions. WCAT appeals are heard by panels made up of combinations of the chair, vice chairs and extraordinary members. WCAT also employs staff and may engage consultants and contractors to assist with its functions.³

[6] The applicant's daughter was injured in a workplace accident in March 2005. Over the years, she has filed several appeals to WCAT regarding her WCA claims.

[7] **Records at issue**—The records consist of emails and draft letters and several pages of typewritten notes.

Non-responsive records

[8] The records before me include several emails, labelled “Excluded – Not Part of FOI Request”. WCAT says that they fall outside the scope of the FIPPA access request because either they post-date the applicant's access request and relate to WCAT's efforts to respond to it, or they relate to a request made to WCAT by WorkSafeBC for help in responding to an information request the applicant made of WorkSafeBC.⁴ In reply to this point, the applicant explains that he requires an impartial person decide all matters related to information that is being withheld.⁵ I have reviewed these emails and agree with WCAT's description of them. They are about the administrative aspect of responding to the applicant's access requests and they do not contain any information of the nature the applicant requested about his daughter's claims and appeals. Therefore these emails, which are on pages 119, 208, 380-82 and 503-517, are not responsive to the access request and need not be disclosed.

¹ Order F10-09, 2010 BCIPC 14 (CanLII).

² [RSBC 1996], Chapter 492 s. 232.

³ WCA, ss. 254, 232, 238 and 235, respectively.

⁴ WCAT's initial submission, para. 12.

⁵ Applicant's reply submission, Exhibit B, p. 9.

[9] **Scope of FIPPA**—Section 3(1) of FIPPA provides that FIPPA applies to all records in the custody or under the control of a public body other than the classes of records described in ss. 3(1)(a) to (k). WCAT has applied s. 3(1)(b) to almost all of the responsive records.⁶

[10] Section 3(1)(b) states:

3(1) This Act applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to the following:

...

(b) a personal note, communication or draft decision of a person who is acting in a judicial or quasi-judicial capacity;

[11] The BC Supreme Court commented on the purpose of s. 3(1)(b) in *British Columbia (Attorney General) v. British Columbia (Information and Privacy Commissioner)*:

All are agreed that the purpose of s. 3(1)(b) is the protection of deliberative secrecy. One aspect of that is the need to protect the ability of those exercising judicial or quasi-judicial functions to express preliminary and tentative remarks and conclusions that might later have to be changed. The risk of their being published could have a constraining effect on the creative process. That consideration would apply to commissions of inquiry reviewing the propriety of conduct of individuals.⁷

[12] Deliberation encompasses gathering and assessing information and formulating of an opinion or conclusion regarding it.⁸

[13] Previous orders have recognized that s. 3(1)(b) does not capture every record created by a person engaged in carrying out the activities of a judicial or quasi-judicial body.⁹ The exclusion is only triggered when a person is actually acting in a judicial or quasi-judicial capacity in respect of the record in issue and is engaged in the deliberative processes that are protected by s. 3(1)(b).

[14] For example, in Order 00-16, former Commissioner Loukidelis considered records in the custody of the Labour Relations Board that related to an application under the *Labour Relations Code*. In that case, the records that he found did not fall within s. 3(1)(b) included communications between panel members relating to the constitution of the hearing panel, emails from board staff

⁶ WCAT does not dispute that the responsive records are in its custody and/or under its control, so that is not at issue in this inquiry.

⁷ 2004 BCSC 1597, at para. 70.

⁸ *Provincial Health Services Authority v. British Columbia (Information and Privacy Commissioner)*, 2010 BCSC 931, para. 31.

⁹ See Order 00-21, 2000 CanLII 10451 (BC IPC) and Order F11-16, 2011 BCIPC 22 (CanLII).

to other staff and to panel members about scheduling meetings to consider a particular application, copies of agendas for policy discussion and memos informing chairs that an application had been referred to a particular panel process. He wrote:

... Section 3(1)(b) covers personal notes, communications or draft decisions of the Board chair, a vice chair, an associate chair or a member created while she or he is deliberating upon the application. This does not mean a record created by such an individual for Board administrative purposes – even those relating to the application – is excluded from the Act's ambit under s. 3(1)(b).

I stress that s. 3(1)(b) is only triggered when a person is actually “acting” in a judicial or quasi-judicial capacity in respect of the record in issue. The section recognizes that employees of public bodies – including members of administrative tribunals – may discharge multiple functions, only some of which could be termed functions of a judicial or quasi-judicial nature... A person must be acting in a judicial or quasi-judicial capacity in relation to the record in question.¹⁰

[15] Determining whether a personal note, communication or draft decision was made by an individual discharging a judicial or quasi-judicial function, as distinct from an administrative function, can be challenging. Previous orders have referenced *M.N.R. v. Coopers and Lybrand*, where the Supreme Court of Canada provided criteria for identifying whether a decision or order is judicial or quasi-judicial. Dickson, J. wrote for the majority:

It is possible, I think, to formulate several criteria for determining whether a decision or order is one required by law to be made on a judicial or quasi-judicial basis. The list is not intended to be exhaustive.

- (1) Is there anything in the language in which the function is conferred or in the general context in which it is exercised which suggests that a hearing is contemplated before a decision is reached?
- (2) Does the decision or order directly or indirectly affect the rights and obligations of persons?
- (3) Is the adversary process involved?
- (4) Is there an obligation to apply substantive rules to many individual cases rather than, for example, the obligation to implement social and economic policy in a broad sense?

¹⁰ Order 00-16, 2000 CanLII 7714 (BC IPC), p. 7. See also: Order 00-21, 2000 CanLII 10451 (BC IPC); Order F10-09, 2010 BCIPC 14; Order F10-35, 2010 BCIPC 53 (CanLII).

These are all factors to be weighed and evaluated, no one of which is necessarily determinative.¹¹

[16] With the above precedents and criteria in mind, I have reviewed each record to which WCAT has applied s. 3(1)(b) to determine whether the record is a personal note, communication or draft decision of a person who - when creating the record - was carrying out a quasi-judicial, as distinct from an administrative, function.

Parties' submissions

[17] The full extent of WCAT's s. 3(1)(b) submission is as follows:

A review of these documents, primarily emails, clearly show that they are part of WCAT's internal decision making process. Decisions about how the applicant's appeals were going to proceed at WCAT were communicated to the applicant in the normal course. The withheld documents relate to the communications that preceded those decisions.

...

Other documents are clearly described as draft decisions (whether a draft final decision on the merits of an appeal or a draft interlocutory procedural decision set out by letter). Final versions of decisions and final versions of letters that were sent to the applicant have been disclosed to the applicant.¹²

[18] The applicant submits that WCAT is misusing s. 3(1)(b) to withhold records the applicant's daughter needs to prove her claim for entitlements.¹³

Analysis

[19] WCAT is a quasi-judicial tribunal whose functions include adjudicating appeals of workers' compensation decisions. The panel members are clearly carrying out quasi-judicial functions when they adjudicate the substantive appeal issues. However, it is apparent that some of WCAT's members also carry out administrative functions. For example, the chair's duties include establishing administrative practices and procedures, appointing vice chairs, determining who will sit on hearing panels, setting adjudication standards, presiding over meetings and developing strategic and operational plans.¹⁴ The chair may also delegate certain of these powers or duties to WCAT members and officers.¹⁵

¹¹ *M.N.R. v. Coopers and Lybrand*, [1979] 1 S.C.R. 495, pp. 7-8. See also: Order 00-16, 2000 CanLII 7714 (BC IPC) and Order F10-09, 2010 BCIPC 14.

¹² WCAT's initial submission, paras. 25 and 28.

¹³ Applicant's initial submission, paras. 3-6.

¹⁴ WCA, s. 234.

¹⁵ WCA, s. 234(4).

[20] Unfortunately, the inquiry materials provide very little information to assist with determining in what capacity the individuals were acting at the time of the communication captured by the records. In particular, WCAT's submissions do not identify the individuals or provide information about their roles or job functions at the time they authored the email or letter. With only a few exceptions - when the titles "appeal coordinator," "senior executive assistant" and "WCAT assessment officer" appear - the records do not include the job title of the individual doing the communicating. Despite the challenge of identifying the functions of the individuals communicating, the content of the records provide the necessary context to enable me to determine if the person was acting in a quasi-judicial capacity.

[21] I find that s. 3(1)(b) applies to approximately half of the records, which consist of the following: draft decisions of panel members, emails that reveal what is contained in those draft decisions, and analysis, opinion and references to related precedent. There are also emails and draft letters regarding case management issues and decisions that pertain to the rights and obligations of the applicant's daughter and will impact the substantive issues to be determined by the panel in her appeals.

[22] However, I find the remaining records do not fall under s. 3(1)(b) because they are not communications of a person acting in a judicial or quasi-judicial capacity. They are about purely administrative and procedural matters, such as:

- Emails between WCAT members and staff with instructions or information about administrative and clerical matters;
- Emails from one individual to another requesting that the second individual review a draft letter;
- Draft letters to the applicant regarding administrative matters such as the scheduling of a teleconference and timelines for submissions;
- Typed notes recording what was said during a telephone conversation with the applicant;¹⁶ and
- Letters which have no content except the applicant's daughter's address, a subject line, and the appeal coordinator's signature block.¹⁷

[23] In conclusion, the records that I find are outside the scope of FIPPA because s. 3(1)(b) applies are located at pp. 0060, 0100-11, 0113-15, 0117-18, 0121-23, 0125-28, 0132-33, 0140-41, 0173-76, 0212-18, 0221-22, 0241-42, 0244-48, 0263-66, 0281-83, 0322-24, 0356-61, 0367-68, 0370-71, 0373-75,

¹⁶ Page 0384. The author of these notes is not revealed in the inquiry materials.

¹⁷ Pages 0410-13.

0377-79, 0386-88, 0389-91, 0402-06, 0416-21, 0471, 0480, 0482-90 and 0543-47.

[24] I will now consider WCAT's application of s. 13 to withhold information from the remaining records that I have determined are within the scope of FIPPA because s. 3(1)(b) does not apply.

[25] **Policy Advice or Recommendations**—Section 13(1) allows public bodies to withhold information that would reveal advice or recommendations developed by or for a public body or a minister. WCAT submits that it is evident from a review of the documents withheld under s. 13 that they contain advice or recommendations provided by WCAT staff to WCAT staff.¹⁸ The applicant submits that ss. 13(2) (a), (d), (k), (l), (m), (n) apply.¹⁹

[26] The parts of s. 13 that are relevant in this case are as follows:

- 13(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.
- (2) The head of a public body must not refuse to disclose under subsection (1)
- (a) any factual material,
...
 - (d) an appraisal,
...
 - (k) a report of a task force, committee, council or similar body that has been established to consider any matter and make reports or recommendations to a public body,
 - (l) a plan or proposal to establish a new program or activity or to change a program or activity, if the plan or proposal has been approved or rejected by the head of the public body,
 - (m) information that the head of the public body has cited publicly as the basis for making a decision or formulating a policy, or
 - (n) a decision, including reasons, that is made in the exercise of a discretionary power or an adjudicative function and that affects the rights of the applicant.

[27] The process for determining whether s. 13(1) applies to information involves two stages. The first is to determine whether the disclosure of the information would reveal advice or recommendations developed by or for the

¹⁸ WCAT's initial submission, para. 27.

¹⁹ The balance of the applicant's submissions regarding s. 13(2) are not helpful to my analysis because they focus on the merits of his daughter's workers' compensation appeals and WCAT's processes, both of which are outside the jurisdiction of FIPPA and my authority to decide.

public body. If it does, it is necessary to consider whether the information falls within any of the categories listed in s. 13(2). The effect of s. 13(2) is that, even in cases where information would reveal advice or recommendations developed by or for a public body, the public body may not withhold the information if it falls within any of the s. 13(2) categories.

[28] Section 13(1) has been the subject of many orders that have consistently held that the purpose of s. 13(1) is to allow full and frank discussion of advice or recommendations on a proposed course of action by preventing the harm that would occur if the deliberative process of government decision and policy-making were subject to excessive scrutiny.²⁰ Recently, the Supreme Court of Canada in *John Doe v. Ontario (Finance)* reiterated this point, stating:

Political neutrality, both actual and perceived, is an essential feature of the civil service in Canada... The advice and recommendations provided by a public servant who knows that his work might one day be subject to public scrutiny is less likely to be full, free and frank, and is more likely to suffer from self-censorship. Similarly, a decision maker might hesitate to even request advice or recommendations in writing concerning a controversial matter if he knows the resulting information might be disclosed. Requiring that such advice or recommendations be disclosed risks introducing actual or perceived partisan considerations into public servants' participation in the decision-making process.²¹

[29] BC orders have also found that s. 13(1) applies not only when disclosure of the information would directly reveal advice and recommendations but also when it would allow accurate inferences about the advice or recommendations.²²

[30] I apply the reasoning in these orders to the facts before me in this case.

Analysis

[31] I find that WCAT withheld some information that neither directly reveals, or would allow accurate inferences about, advice or recommendations, and WCAT does not explain why, in its view, s. 13(1) applies. That information, which I find may not be withheld under s. 13(1), is as follows:

- Emails that contain information and instructions about administrative or clerical matters;²³

²⁰For example, Order 01-15, 2001 CanLII 21569 (BC IPC) and Order F11-17, 2011 BCIPC 23 (CanLII).

²¹2014 SCC 36, at para. 45.

²²Order F10-15, 2010 BCIPC 24 (CanLII); Order 02-38, 2002 CanLII 42472 (BCIPC); Order F06-16, 2006 CanLII 25576 (BCIPC).

²³Pages 061 (repeated at 0284-85, 0542), 0112 (repeated at 0376), 0129, 0130, 0131, 0134, 0250, 0366, 0369.

- A typed note recording what was said during a conversation with the applicant;²⁴
- Letters which have no content except the applicant's daughter's address, a subject line and the appeal coordinator's signature block;²⁵
- The "to", "from" and subject line of emails and the standard header, addresses and signature blocks on WCAT's letters;
- Emails by which an individual forwards an attached document to herself and/or others;²⁶
- Information that appears to be the content of a draft letter (without letter head or signature block) about administrative matters;²⁷
- Cover emails asking others to review draft letters about administrative matters;²⁸ and
- Draft letters about administrative matters that were forwarded to others for review.²⁹

[32] Regarding the draft letters mentioned directly above, previous orders have made it clear that s. 13(1) does not apply to drafts simply because they are drafts.³⁰ The fact that a record is a draft does not mean that all of the record can be withheld under s. 13(1). The usual principles apply and a public body can withhold only those parts of the draft that actually reveal advice or recommendations within the meaning of the section. Previous orders have recognized, however, that editorial advice and recommendations regarding the content and wording of documents contained in the drafts can be withheld under s. 13(1).³¹ There is some information of this nature in the records and I find that it is advice and recommendations. I have also considered whether this editorial or drafting advice and recommendations fall within any of the categories of information listed in s. 13(2), in particular those mentioned by the applicant. I find that none of the categories in s. 13(2) apply. Therefore, WCAT may refuse to disclose, under s. 13(1), this information which is on pages 0037-38 (repeated at 0498-99), 0249 and 0275.³²

²⁴ Page 0384.

²⁵ Page 0410-13.

²⁶ Pages 0372 and 0383.

²⁷ Page 0277 (repeated at 0385).

²⁸ Pages 0124 (repeated at 0243), 0272, 0274, 0276, 0278.

²⁹ Pages 0251-53, 0273, 0279 (repeated at 0395-96), 0476-79, 0493-94.

³⁰ Order 02-027, 2002 CanLII 42456 (BC IPC), p. 6.

³¹ See: Order 03-37, 2003 CanLII 49216 (BC IPC); Order 04-15, 2004 CanLII 34269 (BCIPC); Order F06-16, 2006 CanLII 25576 (BCIPC); Order F07-17, 2007 CanLII 35478 (BCIPC).

³² For certainty, I have highlighted this information in a copy of these pages, which will be sent to WCAT along with this decision.

[33] I will now consider WCAT's application of s. 22 to the information that I have not already determined WCAT may refuse to disclose under ss. 3(1)(b) and 13.

[34] **Harm to Personal Privacy**—Section 22(1) states that the head of 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. The test for determining whether disclosure would be an unreasonable invasion of privacy is contained in s. 22 of FIPPA. Numerous orders have considered the application of s. 22, and the principles for its application are well established.³³ I have applied those principles here.

[35] The onus is on the applicant to establish that disclosure of the third party personal information contained in the requested records would not unreasonably invade those individual's personal privacy under s. 22 of FIPPA. The applicant's submission regarding this exception is that he does not trust WCAT's application of s. 22 to withhold information from the records, and he wants every instance where they do so to be reviewed by an impartial and unbiased decision maker. He also expresses the view that WCAT members and employees do not qualify as third parties, so s. 22 does not apply to their personal information.

[36] At the outset, it is important to clarify that WCAT members and employees do meet the definition of "third party" in Schedule 1 of FIPPA, which is as follows:

"third party", in relation to a request for access to a record or for correction of personal information, means any person, group of persons or organization other than

- (a) the person who made the request, or
- (b) a public body;

Personal information

[37] The first step in the s. 22 analysis is to determine if the information is personal information. Personal information is defined as "recorded information about an identifiable individual other than contact information". 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".³⁴

[38] I find the information that WCAT withheld under s. 22 is personal information. It consists of the following:

³³ See for example, Order 01-53, 2001 CanLII 21608 (BCIPC), and Order 00-18, 2000 CanLII 7416 (BCIPC).

³⁴ See Schedule 1 of FIPPA for these definitions.

- The names of WCAT appellants (other than the applicant's daughter) and details pertaining to their WCAT cases/files and their health;
- The names of WCAT employees or members combined with details about their personal lives and non-work activities;
- Evaluations and opinions about the work performance of named staff members;³⁵ and
- Information about the type and volume of work given to a named employee intermingled with judgements about how quickly or well that employee performs the work.

[39] I also find that there is personal information that WCAT did not identify or withhold under s. 22. It is located on those pages that I determined may not be withheld under s. 3(1)(b) or 13.³⁶ Due to the mandatory nature of s. 22, I must consider this personal information, regardless of whether WCAT has relied on s. 22 to withhold it.³⁷ For clarity and ease of reference, I will refer to this as the "additional" personal information. The "additional" personal information is about identifiable individuals working at WCAT and the administrative tasks they were either instructed to perform or they did perform, such as faxing letters, handling the flow of appeal files and advising the applicant to communicate in writing only.

Section 22(4) factors

[40] The next step is to decide if any of the factors listed in s. 22(4) apply to the personal information identified above. If so, disclosure of the personal information is not an unreasonable invasion of personal privacy. I find that none of the factors in s. 22(4) apply to the personal information.

Presumed Unreasonable Invasion of Privacy

[41] The third step in the s. 22 analysis is to consider whether any of the presumed unreasonable invasions of personal privacy listed in s. 22(3) apply to the personal information that does not fall within s. 22(4). The relevant portions of s. 22(3) state:

22(3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

³⁵ This is the personal information of both the person expressing the opinion and the person the opinion is about.

³⁶ Pages 061 (repeat 0284-85, 0542), 0112 (repeat 0376), 0124 (repeat 0243), 0129-31, 0249-50, 0272-74, 0276-79, 0366, 0369, 0376, 0383-85, 0395-96, 0476-79, 0493-94.

³⁷ This approach is consistent with previous orders, such as Order F08-03, 2008 CanLII 13321 (BCIPC).

- (a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation,
- (b) the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation,
- (c) the personal information relates to eligibility for income assistance or social service benefits or to the determination of benefit levels,
- (d) the personal information relates to employment, occupational or educational history,
- ...
- (g) the personal information consists of personal recommendations or evaluations, character references or personnel evaluations about the third party,...

[42] WCAT submits that ss. 22(3)(a),(b) and (c) apply. It is not apparent to me how s. 22(3)(b) applies, and WCAT does not explain. However, I agree that s. 22(3)(a) and (c) apply to some the third party personal information because it reveals the names of individuals who are appealing benefit decisions made by WorkSafeBC and, in one case, the named individual's psychiatric or psychological condition is discussed. I also find that ss. 22(3)(d) and (g) are applicable because some of the personal information consists of judgments and opinions about the work performance of named WCAT members and staff.

[43] However, I do not find that any of the presumptions apply to the "additional" personal information because it relates to third party job duties in the normal course of work-related activities. It consists of objective, factual statements about what the third party did or said in the normal course of discharging job duties, without any qualitative assessments or evaluations of such actions.

Have the presumptions been rebutted?

[44] Regarding the personal information that WCAT identified, I have considered all relevant circumstances, including those in s. 22(2) to determine if the presumptions have been rebutted. I have reviewed the parties' submissions, the context and content of the records, and in my view, the presumed unreasonable invasions of personal privacy under ss. 22(3)(a),(c),(d) and (g) have not been rebutted. In particular, despite what the applicant suggests in his submissions, none of the third party personal information relates in any way to the substance of the applicant's daughter's appeals, so it would not be relevant to a fair determination of her appeals (s. 22(2)(c)).

[45] In summary, WCAT must continue to refuse to disclose all of the personal information that it identified in the responsive records and which it withheld under s. 22(1).

[46] However, I find that WCAT is not required to refuse to disclose the “additional” personal information because it is merely about the ordinary tasks that the third parties carried out in the normal course of their work. I have considered all relevant circumstances and conclude that disclosure of this “additional” personal information would not be an unreasonable invasion of third party personal privacy.

CONCLUSION

[47] For the reasons given above, I make the following orders under s. 58 of the Act:

1. Subject to paragraphs two and three below, WCAT may not refuse to disclose the records under ss. 3(1)(b) or 13 of FIPPA.
2. WCAT is not obliged to provide the applicant with access to the following records because s. 3(1)(b) of FIPPA applies and they are outside the scope of FIPPA: Pages 0060, 0100-11, 0113-15, 0117-18, 0121-23, 0125-28, 0132-33, 0140-41, 0173-76, 0212-18, 0221-22, 0241-42, 0244-48, 0263-66, 0281-83, 0322-24, 0356-61, 0367-68, 0370-71, 0373-75, 0377-79, 0386-88, 0389-91, 0402-06, 0416-21, 0471, 0480, 0482-90, 0543-47.
3. WCAT is authorized under s. 13(1) of FIPPA to withhold the information that I have highlighted on pages 0037-38, 0249, 0275 and 0498-99 of the records, which accompany WCAT’s copy of this Order.
4. WCAT is required by s. 22 of FIPPA to refuse to disclose all of the personal information that it identified and refused to disclose in the responsive records.
5. WCAT must comply with this Order on or before **November 18, 2014**. I also require WCAT to copy the OIPC Registrar of Inquiries on its cover letter to the applicant together with a copy of the records sent to the applicant.

October 3, 2014

ORIGINAL SIGNED BY

Elizabeth Barker, Adjudicator

OIPC File No.: F13-53170