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Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 194-1997
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INQUIRY RE: A decision by the Workers' Compensation Board (WCB) to withhold personal information relating to an investigation

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1. Description of the review

As Information and Privacy Commissioner, I conducted a written inquiry at the Office of the Information and Privacy Commissioner (the Office) on June 10, 1997 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). This inquiry arose out of a request for review from an applicant of a decision by the Workers' Compensation Board (WCB) to withhold information from records in the custody and control of the WCB pertaining to an investigation.

2. Documentation of the inquiry process

On November 21, 1996 the applicant, a former employee of a forestry company, requested "all memo's, documents and e-mails" which mentioned her by name, including copies of "bulletins, minutes of union meetings etc. from the union representing WCB employees, the Compensation Employees' Union (the CEU), which mentions [her] name or which mentions a grievance put forward by the union on a harassment charge of May, 1996..."

The WCB responded to the applicant's request on February 6, 1997 with a package of records, some of which were severed and some of which were withheld by the WCB under section 22 of the Act. The WCB specifically withheld the names of the WCB employees (the complainants), who had filed an harassment charge against her. The WCB also withheld the handwritten notes of interviews with those same employees, but provided the applicant with an anonymized summary of the information contained in the handwritten notes as required under section 22(5) of the Act.

The applicant requested a review of the decision by the WCB to withhold the identities of the complainants and to provide her with only a summary of her personal information. During mediation, the applicant also requested that I determine whether or not her personal information had been collected by the WCB in accordance with section 26 of the Act.

3. Issues under review and the burden of proof

The issues in this inquiry are whether the WCB properly applied section 22 of the Act to the records listed below, and whether the WCB collected the personal information of the applicant in accordance with section 26 of the Act. The relevant sections are the following:

> **"personal information"** means recorded information about an identifiable individual, including
>
> (a) the individual's name, address or telephone number,
> ...
>
> (g) information about the individual's educational, financial, criminal or employment history,
> ...
> (i) the individual's personal views or opinions, except if they are about someone else.
>
> ***Disclosure harmful to personal privacy***
>
> 22(1) 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.
>
> (2) In determining under subsection (1) or (3) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether
>
> (a) the disclosure is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny,
> ...
> (c) the personal information is relevant to a fair determination of the applicant's rights,
> ...
> (e) the third party will be exposed unfairly to financial or other harm,

(f) the personal information has been supplied in confidence,

(g) the personal information is likely to be inaccurate or unreliable, and

(h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant.

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

...

(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,

(h) the disclosure could reasonably be expected to reveal that the third party supplied, in confidence, a personal recommendation or evaluation, character reference or personnel evaluation,

....

(5) On refusing, under this section, to disclose personal information supplied in confidence about an applicant, the head of the public body must give the applicant a summary of the information unless the summary cannot be prepared without disclosing the identity of a third party who supplied the personal information.

....

Purpose for which personal information may be collected

26 No personal information may be collected by or for a public body unless

(a) the collection of that information is expressly authorized by or under an Act,

(b) that information is collected for the purposes of law enforcement, or

(c) that information relates directly to and is necessary for an operating program or activity of the public body.

27(1) A public body must collect personal information directly from the individual the information is about unless

(a) another method of collection is authorized by

(i) that individual,

(ii) the commissioner under section 42(1)(i), or

(iii) another enactment,

(b) the information may be disclosed to the public body under sections 33 to 36, or

(c) the information is collected for the purpose of

(i) determining suitability for an honour or award including an honorary degree, scholarship, prize or bursary,
(ii) a proceeding before a court or a judicial or quasi judicial tribunal,
(iii) collecting a debt or fine or making a payment, or
(iv) law enforcement.

(2) A public body must tell an individual from whom it collects personal information

(a) the purpose for collecting it,

(b) the legal authority for collecting it, and

(c) the title, business address and business telephone number of an officer or employee of the public body who can answer the individual's questions about the collection.

(3) Subsection (2) does not apply if

(a) the information is about law enforcement or anything referred to in section 15(1) or (2), or

(b) the minister responsible for this Act excuses a public body from complying with it because doing so would

(i) result in the collection of inaccurate information, or

(ii) defeat the purpose or prejudice the use for which the information is collected.

Section 57 of the Act establishes the burden of proof on the parties in an inquiry. Under section 57(2), if the record or part that the applicant is refused access to contains personal information about a third party, it is up to the applicant to prove that disclosure of the information would not be an unreasonable invasion of the third party's personal privacy.

Section 57 is silent with respect to which party bears the burden of proof to establish whether a public body has complied with section 26 of the Act. The WCB argues that the burden lies with the applicant. I disagree. In my view, the burden of proof lies with the public body (in this case the WCB) to establish that personal information about an applicant has been collected by it for a purpose described in section 26. It would be illogical to impose the burden of proof on an applicant in these circumstances, since the purposes for which the personal information has been collected may well be unknown to the applicant.

4. The records in dispute

The records in dispute, which are in possession of the WCB Human Resources Division, are of two types:

1. Nine pages of handwritten interview notes (which the WCB refers to as "witness statements"). These interview notes were withheld by the WCB in their entirety. However, the WCB did provide the applicant with a summary of the information contained in these notes. The interviewees (or "witnesses") were not identified.

2. Two e-mail messages, in which the names of the interviewees referred to in (1) have been severed.

5. Background for this inquiry

The applicant was formerly employed by a forestry company as a claims manager. In the course of her employment with that company, she was required on a regular basis to deal with employees in a particular area office of the WCB on behalf of her employer. On May 10, 1996 certain employees of the area office filed a complaint of personal harassment against the applicant with their union, the Compensation Employees' Union. The applicant was advised of the complaint that day. This complaint was filed pursuant to a Personal Harassment Policy established by the WCB and dated July 13, 1993. The Statement of Commitment that accompanied the Policy reads, in part, as follows:

> The WCB and the CEU also recognize that WCB employees may be subjected to workplace harassment by outside stakeholders; in these circumstances, the WCB and the CEU acknowledge their responsibility to

> support and assist persons subjected to such harassment. (Affidavit of Valerie Molloy, Exhibit A.)

The 1993 Policy contains the following provisions:

> ... In order to conduct a thorough investigation, the alleged harasser will be provided with full details of the complaint, including the complainant's name.
>
> ... If the investigation fails to find sufficient evidence to support the complaint, no documentation concerning the complaint will be placed in either the alleged harasser's or the complainant's file.

As an aside, I would observe that this latter provision is probably contrary to the Act. However, because of the particular facts of this case, this is of no consequence. In any event, the WCB has since revised its Harassment Policy to make it clear that it is subordinate to the requirements of the *Freedom of Information and Protection of Privacy Act.*

The WCB has also prepared a booklet for its employees which is entitled "Towards a Solution." This booklet seeks to explain the 1993 WCB Personal Harassment Policy. It includes the following statements:

> ... Your complaint will be treated with total confidentiality.
>
> ... In order to conduct a thorough investigation, we'll have to provide your alleged harasser with details of your complaint, including your name ... All information from these interviews will be kept strictly confidential. (Affidavit of Valerie Molloy, Exhibit B, pp. 7, 8)

In its submissions in the inquiry, the WCB acknowledged that its Personal Harassment Policy and the booklet "Towards a Solution" contained statements that were "vague" and gave assurances of confidentiality that led the complainants to understand that the information they provided would not be disclosed to anyone, least of all to the applicant. (Reply Submission of the WCB, p. 9)

The personal harassment complaint filed by the CEU on behalf of the three employees in the WCB area office alleged, among other things, that the applicant had engaged in "offensive and demeaning" behavior (as defined in the Policy) that made it increasingly difficult for the area office staff to perform their job functions.

Shortly after being informed of the personal harassment complaint, the applicant left her employment with the forestry company. On June 28, 1996 the CEU withdrew the complaint against the applicant.

The applicant subsequently filed complaints with both the WCB Ombudsman and the provincial Ombudsman. She also made a request under the Act to the WCB for disclosure of information in its possession concerning herself and the personal harassment complaint. The decision of the WCB to withhold some of that information is the subject of this inquiry.

6. The applicant's case

In this inquiry, the applicant seeks an order under Part 2 of the Act requiring the WCB to provide her with access to the withheld information. The applicant also seeks an order under Part 3 of the Act directing the WCB to destroy all personal information about her which was collected in contravention of the Act. It is the view of the applicant that she is caught in a "Catch-22" situation:

> ... the WCB gets to accuse me of harassment with no true investigation, then later, after the charges are withdrawn it gathers more personal information about me, all of which is pejorative and untrue, and *then* it gets to hide behind the legislation by protecting the 'privacy' of its employees. (Submission of the Applicant, p. 1)

The applicant argues that, given the provisions in the WCB Personal Harassment Policy referred to above, the complainants knew or should have known that their names could be released to her. She also believes that she has a right to know the names of her "accusers," especially since the complaint against her was abandoned by the CEU. She submits that:

> The Commissioner has commented that the goal of the investigative process in harassment cases is to secure justice for the complainant and the respondent. In this instance the WCB, the Union and the complainants started off the process by announcing my guilt publicly and issuing sanctions, then conducted a sham of an investigation which was designed to gather information to support the complainants' position only, and to shut out the respondent. (Submission of the Applicant, p. 2)

In her view, she should know the sources of the information about her which she claims was illegally obtained.

The applicant further alleges that her personal information about her employment qualifications was distributed within and outside the WCB without her permission: "Only full disclosure of the names of the complainants, full disclosure of the involvement of the Union, and full disclosure of the involvement of the WCB, and the exposure of them to the consequences of their actions will suffice." (Submission of the Applicant, pp. 2, 8)

The applicant generally submits that only disclosure to her of the full records of her treatment will help to ensure that such a situation does not arise again at the WCB: "In a free and open society, where there is freedom of speech there is also the onus of responsibility. It is time that the WCB, its Union and its employees learned that." (Submission of the Applicant, p. 6) She also submits that disclosure is necessary to clear her name so that she might again choose to take up a position in claims management. (Submission of the Applicant, p. 8)

I have reviewed the applicant's lengthy *in camera* submission, as well as the documentation attached to it. Many of the applicant's arguments contained in this submission are not relevant to the issues raised in this inquiry. With respect to those arguments which are relevant, I regret that the applicant did not make these arguments on the public record, since it would have allowed me to more fully set out my reasons for making my Order.

I have presented below, as I deemed it necessary to do so, the arguments of the applicant about the application of specific sections of the Act.

7. The Workers' Compensation Board's case

The WCB's position is that the applicant "caused stress and upset to various employees" of one of the WCB's area offices in 1995 and 1996.

In general terms, the WCB's position is that it has disclosed to the applicant all of the information in the records in dispute which is personal information about her, including information concerning "the opinions" that others held of her. Additionally, the WCB says that the section 22(5) summary that it provided to the applicant thoroughly, comprehensively, and fairly summarizes all the allegations which the complainants made about the applicant in the witness statements. It argues that what the applicant is really seeking in this inquiry is not personal information about herself but rather personal information about the complainants.

I have presented below the specific arguments of the WCB about the application of section 22 of the Act.

8. The third parties' case

A group of third parties, represented by the CEU, filed a brief *in camera* submission, which I have reviewed.

9. Discussion

Procedural objections

In her submissions, the applicant raised a number of procedural objections, as well as issues other than the issues which I have identified above in my Order as relevant to this inquiry. I agree with the WCB that the applicant's objections and other issues are either not relevant to this inquiry or are outside the scope of my jurisdiction under the Act. (See Submission of the Applicant, pp. 4, 6, 9-11; Reply Submission of the WCB, pp. 3-6)

In camera submissions

All parties to this inquiry have made *in camera* submissions, which have reached a height almost of absurdity in the sense that what one party keeps *in camera*, another party largely chooses to reveal. In addition, the "secrets" of one party are normally known to the others anyway in an inquiry like this one.

I would like participants in hearings to be guided by the way in which my Orders are presented, that is in a relatively anonymized manner. But parties need to know what is being argued by the other side in their submissions so that issues can be more fully joined. My sense is that some parties believe that *in camera* submissions are a kind of status symbol rather than a sometime practical barrier to the accomplishment of what they are seeking. In addition, lengthy *in camera* submissions tend to ramble on and sometimes repeat what a party has already revealed in an open submission.

In the present inquiry, the extensive reliance by the parties on *in camera* submissions renders me unable to present some of their best arguments, up front, in making my Order under the Act. The long *in camera* reply submission of the applicant is an excellent case in point. I would add that it did not make much sense to reply to the WCB's largely public submission in this manner, since it did not require much effort on the part of the applicant to mask the identities of those involved.

I do not wish to deprive parties of the right of making appropriate *in camera* submissions that deal with sensitive matters, or that reveal information that is in actual dispute in the inquiry. But as I approach the issuance of my 200th Order, I have a strong sense that the use of *in camera* submissions has reached a counterproductive level in terms of the real interests of the parties. They have certainly reduced my ability to make decisions that can be publicly explained on a rational basis.

Section 22: Disclosure harmful to personal privacy

The first issue that I must consider is whether section 22 of the Act requires the WCB to refuse to disclose the records in dispute to the applicant. Section 22(1) requires a public body to refuse to disclose personal information to an applicant "if the disclosure would be an unreasonable invasion of a third party's person privacy."

Section 22(2) requires the public body to consider all of the relevant circumstances when determining whether a disclosure of personal information constitutes

an unreasonable invasion of a third party's personal privacy. Under this provision, the "relevant circumstances" which must be considered (and the list is not exhaustive) are those provided for in section 22(2)(a) to (h).

The applicant says that the WCB failed to consider two relevant circumstances, namely those provided for in section 22(2)(a) ("the disclosure is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny") and (c) ("the personal information is relevant to a fair determination of the applicant's rights"). In this regard, the applicant submits that the complainants misused a governmental process to attack her, motivated by a desire to remove her from her employment. (Submission of the Applicant, pp. 1, 5-7)

The WCB relies on section 22(2)(e) ("the third party will be exposed to financial or other harm"), 22(2)(f) ("the personal information has been supplied in confidence"), 22(2)(g) ("the personal information is likely to be inaccurate or unreliable"), and 22(2)(h) ("the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant") to justify their refusal to disclose the records in dispute, and argues that section 22(2)(c) has no relevance because the applicant is not currently involved in any legal proceeding.

The WCB seeks to refute the applicant's request for information pertaining to the accusations against her on the grounds that there is no action pending against her because the complainants withdrew their complaint. (Reply Submission of the WCB, p. 2) This does not vitiate the applicant's right to seek access to records compiled for the original purpose of the complaint of harassment, even though the actual collection actually occurred some months later. It is no comfort for the applicant, who lost her job, for the WCB to now state that "[n]o one, not the WCB or a tribunal with any legal authority, has made a legal finding about who is right or wrong in this situation." Given the dislocation in her professional and personal life, it is at least uncharitable for the WCB to suggest that its employees "wish to continue their professional activities in peace" while the applicant "appears to wish a feud." (Reply Submission of the WCB, p. 2)

On the basis of the *in camera* submission of the applicant, and in all of the particular circumstances of this case, I am of the view that considerable weight should be attached to the factors identified as being relevant in section 22(2)(a) and (c) of the Act with respect to disclosure of the records in dispute. I do not agree with the narrow interpretation of section 22(2)(c) of the Act which the WCB has advanced in this case.

The WCB is in fact relying on sections 22(2)(e), (f), (g), (h), and 22(3)(d) to seek to prevent disclosure of the records in dispute. A WCB personnel representative from its Human Resources Division interviewed the complainants on a confidential basis, which invokes the consideration of section 22(2)(f): "The complainants had no idea that there was the potential for the records created by the [personnel representative] to become public knowledge, which, if [the applicant] receives them, effectively brings them into the public realm." (Submission of the WCB, p. 4) One response to this argument is that any

complaint of harassment has the potential to enter the public realm under certain limited circumstances, as the WCB's revised Harassment Policy of December, 1996 now acknowledges. In this inquiry, the issue is whether the applicant can obtain the personal information in dispute; there is a difference between giving her the personal information and making it truly public. My experience over the last four years, with various types of applicants, is that many of them would like to go "public," but it is not an easy matter for an individual to persuade the media that his or her particular "tragedy" is newsworthy. Although the applicant in this case has taken various actions to seek to protect her interests, none of them are truly "public."

The WCB has made what I regard as a spurious submission to the effect that the records in dispute should not be disclosed to the applicant, because those interviewed may not have had a chance to review the contents of their statements to the WCB's personnel investigator (to verify the accuracy of the notes taken), and thus "the personal information is likely to be inaccurate or unreliable." (section 22(2)(g)) In my view, that is not a valid consideration for non-disclosure, since the more inaccurate and unreliable the recorded personal information in fact is, the more important it is that the applicant obtain access to it. In addition, if the possibly inaccurate and unreliable information is largely information about the applicant, as indeed it is, not third parties, then section 22(2)(g) is not engaged. Section 22(2)(g) is intended to prevent disclosure of possible inaccurate and unreliable information about third parties, not possible inaccurate and unreliable information about applicants. (Submission of the WCB, p. 5)

Additionally, the WCB submitted that disclosure of the records in dispute will expose its employees to "unfair harm" and will compromise "their personal dignity and professional integrity." (section 22(2)(e)) According to the WCB:

> It is difficult to find any reasonable explanation for the aggressive and bizarre challenges to personal integrity and competence of WCB employees that she engaged in throughout 1995 and 1996. The third party complainants have suffered enough from [the applicant]. (Submission of the WCB, p. 5)

The WCB wants me to withhold the records in dispute so as not to encourage the applicant "to continue her aggressive behaviours against WCB [place name] area staff, particularly the complainants." (Submission of the WCB, p. 6) This position is at least somewhat disingenuous, since the complainant is now far removed from the geographical environs of that particular office and, in fact, no longer lives in this province.

Similarly, having read the applicant's various submissions very carefully, I do not agree with the WCB that her tone is "vindictive;" in the circumstances, I find her reasonably restrained. (Reply Submission of the WCB, p. 3) It is quite patronizing for the WCB to disparage the applicant for her alleged "inability to retreat from the events of 1995 and 1996, leave people alone, and move on with her life," because it is the applicant who can now at least claim victim's status in this affair. (Submission of the WCB, p. 6)

The WCB's various efforts to argue potential harm to its employees in a specific area office also runs afoul of the following admission:

> ...[the applicant] and any future employers may as well assume that the entire [area office] staff know about [the applicant's] past behaviour with certain employees. It is a small office, there is no law against employees discussing, among themselves, behaviours of difficult outside stakeholders, and the probability (although there is no evidence on that point) is that apart altogether from written documentation, [the applicant's] reputation is widespread. (Reply Submission of the WCB, p. 5)

It is hard to argue potential harm and stress to a small number of complainants, as the WCB does, when it is likely that they comprise a significant proportion of the WCB staff in one particular small office and are most likely well known to the applicant because of her work with them. Therefore, I do not accept that section 22(2)(e) of the Act applies in this case.

The WCB seeks to rely as well on section 22(3)(d), which defines an unreasonable invasion of privacy as "personal information [that] relates to employment, occupational or educational history." The WCB submits that these complainants "were telling their own personal stories about events that occurred to them during the course of their employment as" WCB area office staff. The applicant in this case "was the external source of conflict," a condition that the WCB describes as "incidental." According to the WCB, the "complainants are entitled to have kept confidential their identities as well as exactly what each of them said, because that is their personal information." (Submission of the WCB, pp. 4, 5) I regard the WCB's reliance on this section as a considerable stretch in terms of what a reasonable person can construe as "employment, occupational or educational history." In my view, the records in dispute do not contain the personal "employment, occupational or educational history" of the complainants within the meaning of section 22(3)(d). (See Order No. 97-1996, April 18, 1996, p. 8; and Order No. 141-1996, December 20, 1996, pp. 6, 7)

The applicant submits that the WCB's reliance on sections 22(3)(d) and (g) has no bearing, since the WCB had no right to collect her information in the first place:

> Furthermore, the information is character assassination, not 'information.' It is pejorative and misleading. Disclosure at this point, therefore, would *correct* a wrong rather than create one. (Submission of the Applicant, p. 5)

I find that the WCB cannot rely on sections 22(3)(d) and (g) to prevent disclosure of the information in dispute. See Order No. 81-1996, January 25, 1996, p. 6; Order No. 97-1996, April 18, 1996, p. 8.

The applicant in this particular inquiry was an employee of a private sector concern who did business with the WCB on behalf of her employer. She then became the object of a complaint by the CEU to the WCB that led to the ending of her employment and her eventual departure from the province after a period of unemployment. Those who complained against her are still employees of the WCB. It is not surprising that the applicant harbours resentment and suspicions based on a lengthy career in a specialized aspect of human resources. She has also conducted various phases of her case against the WCB and the CEU without the kinds of resources that these relatively large organizations enjoy.

Whatever the ultimate merits of the positions of the various parties on the larger issues that underlay this inquiry (which are not matters for me to decide), it is difficult not to feel that the applicant should see the complete case against her, including, as she argues, the names of her accusers. It is not implausible, for example, that the applicant has indeed been a victim of a vendetta against her by various levels of the WCB and even by her fellow employees who, for reasons of an imbalance of power relationships affecting any company dealing with the WCB, may have somehow "joined" the campaign against her as a way of removing an apparent annoyance to the WCB. As I have indicated in previous Orders, I have a strong sense of the utility of leveling the playing fields in cases like this one by full disclosure of the records in dispute.

On balance, having considered all of the relevant factors under section 22(2) in the context of this particular case and having reviewed the withheld information, I conclude that disclosure of that withheld information would not constitute an unreasonable invasion of the third party's privacy.

Section 26: Purpose for which personal information may be collected

The applicant generally submits that the WCB had no right to collect personal information about her; among other things, she was not an applicant for WCB benefits. (Submission of the Applicant, p. 7) The complaint against her was "an act of malice and mischief." In her view, the "WCB had no statutory authority to conduct the investigation that it did, and to impose sanctions and penalties on me." (Submission of the Applicant, p. 8)

The WCB submits that the witness statements in dispute "explain the rationale for the harassment complaint, and provide the background to a stressful workplace environment." It collected this information on the basis of section 26(c) of the Act. WCB managers and directors "needed the information recorded not only to respond to the CEU's harassment complaint ..., but also to have a fresh record of the incidences because [the applicant] appeared to be pursuing matters far beyond the CEU harassment issue." (Submission of the WCB, p. 7; see also p. 9; the Affidavit of David Duncan, paragraph 27; and the Affidavit of Debra Mills, paragraph 10) The WCB submits that this was

within the mandate of its Human Resources Division. The WCB further states the applicant had complained to the offices of the WCB and the provincial Ombudsman.

At the end of the day, and despite this tangled tale, I agree with the WCB that "it would reduce to absurdity sections 26 and 27 of the Act if, as [the applicant] now alleges, a public body employer could not take statements from its employees about their version of events of serious workplace conflict and stress caused by an individual external to the public body, without the permission of that external individual." (Submission of the WCB, p. 9)

I am satisfied that the WCB has met its burden of proof of establishing that it did not violate section 26 by collecting personal information about the applicant. I am satisfied that the WCB was authorized to do so under section 26(c).

There is nothing in the evidence before to suggest that, in pursuing an investigation of the complaint against the applicant, the WCB acted with malice, mischief, or other inappropriate motive. On the contrary, the evidence supports the position of the WCB that, for valid labour relations reasons, it was entirely appropriate for it to investigate matters that affect its employees and their workplace environment, including matters involving non-employees. Additionally, to the extent that the WCB pursued a form of investigation following the withdrawal of the harassment complaint, this was necessitated by the fact that the applicant had initiated complaints with both the WCB Ombudsman and the provincial Ombudsman.

Review of the records in dispute

The applicant has received a summary of the records in dispute; I have reviewed both the summary and the original records. My review reinforces my conclusion that the withheld information is not personal information the disclosure of which would be an unreasonable invasion of the privacy of the WCB employees involved under section 22 of the Act. The withheld information consists primarily of accounts of meetings and interactions that the complainants had with the applicant. An applicant in a case such as this should be given access to records which contain recollections of meetings and working relationships that others had with her.

The WCB's arguments about protecting the names of third parties is further undercut by the practical reality that they had to be union employees in the WCB's area office with whom the applicant had contact, since only these employees would have been in a position to file the personal harassment complaint.

Conclusions

Although I am well aware that the complexity and emotional heat of this inquiry has led me down various byways and pathways, I am even more aware that, at the end of the day, this case is solely an issue of access to a dozen or so pages of information in the

records in dispute. From this perspective, I conclude that the applicant has met her burden of proof under section 22 of the Act and that disclosure of the full records in dispute will not be an unreasonable invasion of the privacy of the third parties in the circumstances of this particular inquiry.

I find it important that, at the end of the inquiry, the WCB stated that the purpose of collecting the information in the records in dispute was as follows: The "subsequent investigation was not pursuant to the Harassment Policy, but rather an internal investigation required as a labour relations service to assist the employees involved." (Reply Submission of the WCB, p. 5) This admission reinforces my view that the applicant has a right to see exactly what was written down about her, as does the WCB's almost final statement that "the fact of the matter is that the complaints were withdrawn before an investigation under the Harassment Policy could ever take place." (Reply Submission of the WCB, p. 6) I further disagree with the WCB that "no useful purpose would be served by disclosing to her [the applicant] the personal information of the complainants." (Reply Submission of the WCB, p. 6) The WCB may now accuse the applicant of fostering "a feud mentality," but it decided to collect the personal information about her relationship with its employees in the first place, even after the complaint was withdrawn.

10. Order

I find that the Workers' Compensation Board collected the applicant's personal information in accordance with section 26 of the Act. Accordingly, I make no order under section 58(3)(e).

I find that the Workers' Compensation Board was not required under section 22 of the Act to refuse access to the information in the records in dispute. Accordingly, under section 58(2)(a) of the Act, I order the Workers' Compensation Board to disclose the records in dispute to the applicant.

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David H. Flaherty
Commissioner

October 14, 1997