

**NORTHWEST TERRITORIES
INFORMATION AND PRIVACY COMMISSIONER**

Review Report 20-236

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BACKGROUND

The Complaint was an employee of the Workers' Safety and Compensation Commission (WSCC). He had made a claim for compensation as a result of a workplace injury or illness. That claim worked its way through the process and resulted, eventually, in a written report prepared by the WSCC Review Committee (the WSCC Report or the Review Committee Report). It was the Complainant's understanding that this report would be provided only to him and to the President of the WSCC and that no one else was to receive it. In particular, no one in his division of the WSCC was to have this report or to be privy to its contents. The report contained both personal information and sensitive personal health information about the Complainant.

Some time later, the same employee was involved in a workplace investigation under the GNWT's "Harassment Free and Respectful Workplace Policy". In the final report of the investigator's in this matter (the Investigation Report), there was reference to evidence from A.B., who was the Complainant's direct supervisor at the WSCC. The Investigation Report indicated that A.B. "had become aware of the Complainant's WSCC status when he received" the WSCC Report.

The Complainant alleged that this indicates that the WSCC Report, which contained his sensitive personal information gathered for the purpose of addressing his WSCC claim, was improperly disclosed to A.B. and then improperly used in the context of the workplace investigation. In both respects, he claims his privacy was breached.

THE WSCC's RESPONSE

The WSCC provided a detailed and fulsome response to a series of questions I asked with respect to this situation, and as to their understanding of their obligations both as

an employer and in their role as a decision maker under the *Workers' Compensation Act*. In this case, the Complainant was both a claimant under the *Workers' Compensation Act* (WCA) and an employee.

The WSCC advised that the Complainant had made a claim for compensation under the *Workers' Compensation Act* and a decision was made to deny the claim at the first level of consideration. The Complainant did not agree with this decision and asked that it be sent to the Review Committee. The Review Committee is created by the *Workers' Compensation Act* for the purpose of conducting review of WSCC decisions. The Review Committee may confirm, vary or reverse a decision of the Commission. This is the first level of appeal under the WCA. The Review Committee is privy to the full contents of the Claimant's file pertaining to the decision under review. This would include medical reports, the Report of Injury, and correspondence with the employer or the Complainant and the Commission, among other information. The WCA gives the Review Committee the authority to compel the production of documents for the purpose of its review.

In response to a question about the rules around the confidentiality of the Review Committee's work, the WSCC confirmed that their legislation (section 161) provides that there is to be no disclosure of information contrary to the *WCA*, the *Access to Information and Protection of Privacy Act*, the Policies of the Governance Council or the *Health Information Act*. It also noted that section 164(1)(b) of the *WCA* directs the WSCC and, by extension, the Review Committee to disclose to an employer any information related to an issue in a review to which the employer is a party. Further, section 31(3) of the Act requires the Commission to provide written notice of its decision regarding a claim for compensation to the worker, as well as to the worker's employer, and that notice must contain the "reasons for the decision". The Review Committee was, therefore, required to provide the WSCC Report to the Complainant's employer, which in this case was the WSCC.

Normally, a copy of a decision of the Review Committee is also shared with a number of officials within the WSCC, including the Chair of the Review Committee, the Manager of

Claims Services, the Director of Claims Services, the VP of Stakeholder Services, the VP of Executive Services and the President/CEO. This internal sharing is for the purpose of ensuring “that the decision of the Review Committee is implemented accordingly”. They advised, as well that the “Claim Owner” responsible for the original decision is also “notified of the outcome and the reasons for the outcome for on-going quality assurance, training and development purposes as well as for implementation”. It is unclear from the submissions who the “Claim Owner” is, though from the context I am assuming that it is the employee of the Commission who made the initial decision.

In this case, the WSCC appears to have provided a copy of the report to:

- a) the Review Committee Chair
- b) the President/CEO
- c) the VP of Corporate Services
- d) the VP of Stakeholder Services
- e) the Director of Claims Services

In addition, the VP of Corporate Services created a redacted version of the report to remove all medical information and this version was provided to the Manager of Human Resources. It was their position that this was an appropriate disclosure of the report so that the WSCC, as an employer, could initiate any necessary internal processes to respond to the hazard, risk or incident that gave rise to the injury.

A copy of this redacted version of the report was also provided to the Director of the Complainant’s division, as well as the Complainant’s direct supervisor “so that process and procedural gaps that gave rise to the injuries causing [the Complainant’s] claim could be identified and addressed.”

The WSCC points out that they could not find any confirmation that the Complainant in this case had been given assurances that the WSCC Report would be provided only to himself and the President/CEO as he claims. They provided a copy of correspondence between the Complainant and the Review Committee Registrar in which the process of communicating the Review Committee Report would be handled was discussed. The

Complainant asked a specific question about who would receive a copy of the Review Committee Report and he was advised that “the decision was forwarded to the VP and Director of Stakeholders Services as well as to the Dave Grundy, President only” (sic)

The WSCC argued that it would have been unlikely that the Review Committee would have agreed to a limited distribution of the Report because

- a) it would conflict with established process required for implementing the remedies from Review Committee Decisions;
- b) this would be unreasonable given that the Review Committee decision resulted, in this case, in a previously denied claim being accepted, which would require active case management by the WSCC (as employer).

DISCUSSION

I would like to thank the WSCC for providing full and frank information in relation to this matter. This case is somewhat out of the ordinary because the privacy issues must be considered from the point of view of the Review Committee as a decision maker and also, separately, from the point of view of the WSCC as the employer of a claimant. This dichotomy creates additional burdens on the organization with respect to how the information in its possession is used and disclosed.

The WSCC provided our office with a number of relevant policy documents, including one which deals with the situation in which the claimant is also an employee of the WSCC, which is the situation in this case. This policy is, however, more about avoiding conflicts of interest that might result from staff evaluating a claim by one of their own, than recognizing and addressing the particular challenges to privacy that this situation brings with it. It provides only two paragraphs of a six page document by way of guidance on the issue of privacy and provides only that

All WSCC staff must take reasonable precautions to protect confidential information as set out in the Government of the Northwest Territories’

Code of Conduct, the *Access to Information and Protection of Privacy Act* and Administrative Policy, A.12, Privacy and Information Security Breach Management.

Once an In-House claim is identified, the Director of Claims Services, or appropriate Manager, sets the confidentiality status in CAAPS on the electronic claim file as well as all other electronic information associated with the claim.

This Complaint really raises four questions:

1. Did the Review Committee breach the Complainant's privacy by providing a copy of the WSCC Report to the President of the WSCC and/or the VP of Stakeholder Services?
2. Was the Complainant's privacy breached by the distribution of the WSCC Report to the VP of Corporate Services, and the Director of Claims Services?
3. Was the Complainant's privacy breached when the VP of Corporate Services provided a redacted version of the WSCC Report to the Manager of Human Resources, to the Director of the Complainant's division and to the Complainant's direct supervisor?
4. Was the Complainant's privacy breached when the Complainant's direct supervisor referred to the WSCC Report in the context of the GNWT's Workplace Investigation?

Preliminary Issues

Before addressing these four questions, two preliminary issues come to mind.

The first of these is the Complainant's understanding that only the President of the WSCC and the Complainant himself would receive a copy of the Review Committee Report. He asked, specifically, who would be receiving the Report and he was advised that "the decision was forwarded to the VP and Director of Stakeholders Services as well as the (sic) Dave Grundy, President only". This implies a very small distribution list and the Complainant cannot be faulted for assuming that this meant exactly what it said - that only the President and the VP and Director of Stakeholder Services would receive the report. This does not recognize, however, that these two WSCC employees might then disclose the report more widely within the organization, which appears to be what actually happened.

The second issue is generally the content of reports issued by the Review Committee. This Committee is required, by law, to advise both the worker and the employer of their decisions. Furthermore, the Review Committee is required to advise both of the "reasons" for the decision. Some level of detail in terms of the information put in these reports will, therefore, be necessary. However, for the Review Committee, the issue is how much detail is included in these reports and how much of sensitive personal information and personal health information is necessary to achieve the legislated goals of the report? I did not ask for, nor did I receive, a copy of the WSCC Report as part of this review process. Both parties, however, agree that the report contained a significant amount of very sensitive personal information about the Complainant, including personal health information. Because I have not seen the report in this case, I can only address this issue generally. Before releasing these reports, the Review Committee should be considering if all of the information contained in the report is absolutely necessary. To the extent that it is determined that such information is necessary to meet the requirements of the WCA, is the information in the report the least amount/least detailed information needed to do so? This may be a rather fine line because both the claimant and the employer will have to have sufficient information upon which to base their assessment as to whether or not to appeal the decision further. However, it is an exercise that must be done for each report done by the Review Committee, simply because of the very sensitive nature of the personal information upon which it relies to make its decisions. The less personal information and personal health information in

one of these reports, the less likely it is that sensitive information will be mishandled or be the subject of an unauthorized disclosure.

1. Did the Review Committee breach the Complainant's privacy by providing a copy of the WSCC Report to the President of the WSCC and/or the VP of Stakeholder Services?

When making this disclosure, the Review Committee was acting in its role as an adjudicator and was following the legislative requirement to provide both the employer (the President/CEO of the WSCC) and the claimant (the Complainant) with a copy of the report. This is a legislated requirement so Section 48(p) of the *Access to Information and Protection of Privacy Act*, which allows for the disclosure of personal information "for the purpose of complying with a law of the Northwest Territories..." is applicable and makes this disclosure an "authorized disclosure" under the Act. This is still limited by the requirement to disclose the least possible amount of information to meet the purposes of the legislation but, to the extent that the President/CEO of the WSCC was provided with a copy of the report as the employer, this was not a breach of the Complainant's privacy.

It is not as clear to me the purpose of the disclosure to the VP of Stakeholder Services. However, section 48(k) authorizes the disclosure of personal information "to an officer or employee of the public body... where the information is necessary for the performance of the duties of the officer or employee". I assume that there is a legitimate business reason for informing the VP of Stakeholder Services of the outcome of the Review Committee's consideration of the matter. As noted above, however, the question then becomes how much and how detailed does the information have to be to meet those business purposes. I am, however, satisfied that the disclosure of the WSCC Report to the VP of Stakeholder Services was an appropriate disclosure and that the use of that information for the purposes of administering the WSC Act by the VP of Stakeholder Services and his/her staff is a legitimate use of the information.

2. Was the Complainant's privacy breached by the distribution of the WSCC Report to the VP of Corporate Services, and the Director of Claims Services?

This is where matters become a little less clear. It is not clear whether it is normal practice for the Review Committee to provide a copy of all of its reports to these divisions of the WSCC or whether this happened in this case only because the claimant was an employee of the WSCC. In fact, it is not entirely clear whether the report was provided to these parts of the organization by the Review Committee as part of the review process, or they were shared with these parts of the organization by the President or the VP of Stakeholder Services as part of the organization's response to the report as an employer. It is important to understand the context of the sharing to determine whether or not the sharing constituted a breach of privacy.

Is it normal for the Review Committee to provide a copy of all of their reports to these positions? If so, I am assuming that there is a legitimate business purpose associated with the administration of the WCA which justifies this disclosure. Again, the question here would be whether too much information is being disclosed to these other business areas. Only necessary personal information should be being disclosed, even within the organization itself, for the purposes of the administration of the WCA.

If, on the other hand, the Review Committee does not normally disclose its reports to the VP of Corporate Services, and/or to the Director of Claims Services and they did so in this case, the result is a breach of the Complainant's privacy. If there is no business purpose for the disclosure of these reports to Corporate Services or Claims Services in the normal course of the Committee's business, this does not change merely because the WSCC is the employer in this case.

If the report was shared with the VP of Corporate Services and/or the Director of Claims Services by the President/CEO for the purposes of dealing with the decision as the employer of the claimant, so that the organization could take appropriate steps to deal with the decision, then it seems to me that this is a use and a disclosure authorized by section 48(g) which allows public bodies to use and disclose personal information "for

the purpose of hiring, managing or administering personnel of ...a public body". Again, with the proviso that such use/disclosure of the report should be limited to that which is necessary, it would be expected that the President/CEO would share at least the outcome of the Review Committee's deliberations so as to address any issues identified in the report that need to be addressed by the employer.

The same holds true if the additional disclosures were perpetrated by the VP of Stakeholder Services, provided that this position has a role to play in the organization's direct response to the decision as the claimant's employer. If "Stakeholder Services" does not deal with personnel issues, however, it seems to me that there was no operational purpose for the VP of Stakeholder Services to be sharing the report with anyone else within the organization.

In summary, it is vital that the lines of communication and the purposes of the communication are clear when the claimant is also an employee. Whether or not a communication amounts to an unreasonable invasion of privacy will depend entirely on who is doing the disclosing and the context for the disclosure. If the information would not be shared widely for a claimant employed by someone other than the WSCC, it should not be shared widely for a claimant who is a WSCC employee. While the President/CEO must be given a copy of the Review Committee's report as the employer, any internal communications about the WSCC's response to that report should be controlled by the President/CEO or whoever in the organization is assigned to the role of dealing with such issues. The context of every such communication should be clear within the body of the communication.

3. Was the Complainant's privacy breached when the VP of Corporate Services provided a redacted version of the WSCC Report to the Manager of Human Resources, to the Director of the Complainant's division and to the Complainant's direct supervisor?

I very much appreciate that before sharing the Review Committee's report, the VP of Corporate Services redacted personal information about the Complainant that was

unnecessary to the work of those receiving the report. Again, I have not seen a copy of this report as redacted, but I expect that the name and position of the Complainant were not removed, but references to his specific health issues were. This approach should continue to be employed in situations in which the recipient does not need specific personal information to complete a given task. This approach reflects good privacy awareness and privacy best practice.

Disclosure of a redacted copy of the report would appear to be in accordance with section 48(k) which allows the use/disclosure of information “to an officer or employee of the public body ... where the information is necessary for the performance of the duties of the officer or employee...”. I am satisfied that the Complainant’s superiors required, in their role as an employer, at least some information about the outcome of the Review Committee’s deliberations so that steps could be taken to address the content of that report.

4. Was the Complainant's privacy breached when the Complainant's direct supervisor referred to the WSCC Report in the context of the GNWT's Workplace Investigation?

Section 48(g) once again applies here. This subsection allows the disclosure of information for the purpose of managing or administering personnel. A workplace investigation clearly falls under the definition of “managing” or “administering” personnel. Also likely applicable is section 48(p) which allows for the disclosure of information for the purpose of complying with a written agreement or arrangement made under a law of the Northwest Territories. I am assuming here that the GNWT’s Workplace Investigation was conducted under the auspices of an existing collective bargaining agreement.

In this case, there is nothing that suggests, in fact, that the Committee Report was disclosed in the workplace investigation proceedings. While there appears to have been reference to the Committee Report in the workplace investigation, the record itself was not, apparently disclosed. That said, it is fairly clear that there was some discussion in the investigative process about the Committee Report and the outcome of the Complainant's claim for compensation from the WSCC. In fact, it appears that the Committee Report and the Workplace Investigation were in some way related so it would be completely expected, and implicitly consented to by the Complainant, that his personal information would be included in the evidence gathering and discussion in relation to his complaint. Either way, reference to the report, in and of itself, does not amount to an invasion of the Complainant's privacy.

CONCLUSION

I am not able, based on the information provided to me, to come to a determinative conclusion as to whether there was an unauthorized disclosure of the Complainant's personal information as contained in the Committee Report. This, in itself, creates concerns about the way in which the WSCC handles internal communications, and whether they adequately managed their dual roles as both regulator and as employer in this case. There is evidence that in at least some instances the WSCC took steps to protect at the Complainant's privacy in terms of the content of the Committee Report. These processes, however, could be improved.

RECOMMENDATIONS

While I cannot conclude with any certainty that the WSCC's handling of the Committee Report amounted to a breach of the Complainant's privacy, I do have recommendations which might assist the organization to be more privacy aware and privacy protective going forward:

1. I recommend that the WSCC review and revise its Administrative Policy D.1, In-House Claims and to add necessary provisions to recognize the privacy implications of such claims in addition to the conflict of interest implications.
2. I recommend that the WSCC, and in particular the Review Committee, review its policies in relation to the preparation of its written reports and develop specific policies surrounding the inclusion of detailed medical or other personal information about the claimant, including:
 - a) how much personal information is necessary to include for the purposes intended by the report;
 - b) guidelines for limiting the inclusion of such information to the least amount possible to accomplish that purpose (for example, using generalities rather than specifics);
 - c) providing for any special or additional measures that need to be taken when the claimant is also an employee of the WSCC to as to protect the employee's privacy to the extent necessary;
3. I recommend that in communications with a claimant who is also a WSCC employee, care be taken to ensure that the claimant understands the role of the WSCC as a regulator and as an employer such that the claimant is aware that notice of decisions will be given to the WSCC in its role as an employer and that the information in those decisions may be further used/disclosed by the employer pursuant to section 48 of the Act for the purposes of complying with the decision made.
4. I recommend that the Review Committee Registrar or some other position be required to review all written reports before they are distributed to flag the inclusion of personal information and details which may not be necessary to the purpose of the report.

5. I recommend that the Review Committee limit the distribution of their reports within the WSCC to only those who “need to know” for necessary follow up. I wonder, for instance, if providing a copy of every such report to the President/CEO is necessary. If these reports are to be distributed to additional employees within the organization, personal identifiers in the report should, to the extent possible, be removed from the report before such distribution.

6. I recommend that the WSCC ensure that when it exercises its legislated authority in relation to one of its own employees, that distribution of any internal communications adhere strictly to normal operational business requirements. When notifying the WSCC as an employer of the claimant it should be clear in the content of the communication that this is the context information is being shared. There should be one point of contact for the WSCC as the employer (whether that is the President/CEO or the VP of Corporate Services or some other position) and all communications related to the WSCC’s role as an employer be addressed to that individual only.

Elaine Keenan Bengts
Information and Privacy Commissioner