

Manitoba Ombudsman

REPORT UNDER

THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

CASE 2017-0280

MANITOBA PUBLIC INSURANCE

PRIVACY COMPLAINT: DISCLOSURE OF PERSONAL INFORMATION

PROVISIONS CONSIDERED: 44(1)(d)(e) and 42(2)

REPORT ISSUED ON OCTOBER 3, 2017

SUMMARY: Our office received a complaint under the Freedom of Information and Protection of Privacy Act (FIPPA) alleging an unauthorized disclosure of the complainant's personal information about her income by Manitoba Public Insurance (MPI). MPI explained how the disclosure of some personal information was authorized, but also agreed that it was not necessary to disclose information about the complainant's annual income. We found that the disclosure was not limited to the minimum amount of information necessary and the complaint is supported. MPI took reasonable and appropriate steps to address the unauthorized disclosure and prevent a reoccurrence.

THE COMPLAINT

On July 13, 2017, our office received a complaint under the Freedom of Information and Protection of Privacy Act (FIPPA or the act) alleging an unauthorized disclosure of personal information by Manitoba Public Insurance (MPI or the public body). The complainant indicated that she had submitted personal information to MPI for the purposes of facilitating an injury claim related to an incident where she was struck by a moving vehicle. She alleged that some of this information was subsequently disclosed to a third party.

Specifically, the complainant alleged that MPI disclosed her annual income to the physical rehabilitation facility where she was seeking treatment for injuries incurred in the vehicular collision. The complainant recognized that disclosure of some information was reasonable, however, she alleged that income information was not necessary in order for the physical rehabilitation facility to provide its services.

Our office notified MPI of the complaint on July 26, 2017 and we requested written representations to provide details and an explanation about the disclosure.

INVESTIGATION

The information that is at issue in this complaint is the complainant's annual income. The privacy provisions of FIPPA apply to "personal information" as defined under the act. This definition includes a non-exhaustive list of characteristics to describe the term "personal information."

Our office found the following parts of the definition relevant in this case:

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

(j) information about the individual's source of income or financial circumstances, activities or history,

We determined that the information at issue, the complainant's annual income, is information about an identifiable individual and specifically that it is information about the individual's financial circumstances or history. Accordingly, the information at issue constitutes personal information.

Our office reviewed the representations we received from the public body on August 29, 2017. MPI explained that the collection of the complainant's personal information was related to the Personal Injury Protection Plan (PIPP) injury claim the complainant had opened in relation to injuries sustained in a motor vehicle accident.

The public body advised us that it is authorized to administer insurance claims pursuant to clause 6(2)(g) of the Manitoba Public Insurance Corporation Act (the MPIC Act), and that section 138 of the MPIC Act authorizes the public body to take any measure it considers necessary or advisable to contribute to the rehabilitation of a victim, lessen a disability resulting from bodily injury, and to facilitate the victim's return to a normal life or reintegration into society or the labour market.

These provisions of the MPIC Act are as follows:

Additional powers

6(2) *The corporation has the power and capacity to do all acts and things necessary or required for the purpose of carrying out its functions and powers and, without limiting the generality of the foregoing, the corporation may*

(g) do all things necessary for the purpose of settling, adjusting, investigating, defending and otherwise dealing with, in conformity with this Act and The Insurance Act insofar as is applicable, and the regulations made under both Acts, claims made in respect of contracts by which the corporation may be liable as insurer or in respect of any plan established under section 6;

Corporation to assist in rehabilitation

138 *Subject to the regulations, the corporation shall take any measure it considers necessary or advisable to contribute to the rehabilitation of a victim, to lessen a disability resulting from bodily injury, and to facilitate the victim's return to a normal life or reintegration into society or the labour market.*

We note that subsection 44(1) of FIPPA sets out when personal information can be disclosed by public bodies, and identifies the circumstances in which a disclosure can be made without the consent of the individual the information is about. Clauses 44(1)(d) and (e) of FIPPA are relevant in this matter and read as follows:

Disclosure of personal information

44(1) *A public body may disclose personal information only*

(d) for the purpose of complying with an enactment of Manitoba or Canada, or with a treaty, arrangement or agreement entered into under an enactment of Manitoba or Canada;

(e) in accordance with an enactment of Manitoba or Canada that authorizes or requires the disclosure;

It is clear to our office that the disclosure of personal information relevant to an insurance claim and the rehabilitation of an injury would be in compliance with the MPIC Act. Accordingly, a disclosure related to the purposes outlined under the MPIC Act would be authorized under clauses 44(1)(d) and (e) of FIPPA.

However, every disclosure of personal information must be limited to the minimum amount of personal information necessary to accomplish the purpose of the disclosure. Subsection 42(2) of FIPPA is relevant in this regard:

Limit on amount of information used or disclosed

42(2) *Every use and disclosure by a public body of personal information must be limited to the minimum amount of information necessary to accomplish the purpose for which it is used or disclosed.*

MPI confirmed that a reference to the complainant's annual income was contained in a letter from July 2015 which was sent to the physical rehabilitation facility. In its representations, MPI acknowledged that the disclosure of the complainant's annual income to the physical rehabilitation facility was not necessary for the facility to provide its services.

We agree with the public body that it was not necessary to disclose the personal information about complainant's income. Accordingly, as the disclosure was not limited to the minimum amount of information as required under subsection 42(2) of FIPPA, the complaint about this disclosure is supported.

The public body provided information to our office to explain the steps it had taken in response to this breach of privacy. MPI advised that this letter was removed from the complainant's electronic injury claim file within the public body on August 1, 2017, and that an amended version of the letter that did not reveal the annual income was added to the file on the same date.

MPI also advised that the physical rehabilitation facility confirmed that it had destroyed the original physical copy of the letter after it was scanned into the facility's electronic filing system. MPI stated that the physical rehabilitation facility deleted the electronic copy on August 1, 2017, and confirmed that no other copies had been made, the document was not disclosed to any other third parties, and the information at issue had not been used. MPI stated that an amended copy of the letter with the income information removed was provided to the physical rehabilitation facility.

MPI advised that a copy of the complainant's PIPP file was disclosed to the Automobile Injury Compensation Appeal Commission (AICAC) in April 2016 in relation to an appeal that the complainant had filed with the agency. The public body stated that a copy of the letter from July 2015 was included in the file. MPI advised that it retrieved this letter from AICAC on August 3, 2017, and provided an amended copy of the letter on that same date. As well, MPI advised that in correspondence dated August 3, 2017, the director of AICAC confirmed that the letter at issue had been removed from AICAC files, no other copies had been made, the document had not been disclosed to any third parties, and the information was not used.

The public body also indicated that a copy of the complainant's PIPP file had previously been sent to the complainant's lawyer. The public body advised that the lawyer was contacted on August 1, 2017, and at that time agreed to remove the July 2015 letter from his file and destroy it. MPI stated that an amended copy of this letter was sent to the lawyer.

MPI also advised of the measures it took to prevent other breaches like this one from occurring in the future. The public body stated that this privacy breach was inadvertent and was the result of human error. MPI advised that in December 2015 and January 2016 the complainant had asked her case managers at that time why salary information had been included in the letter sent to the physical rehabilitation facility. Although the complaint was advised that this information should have been omitted, MPI indicated that the matter was not reported as a privacy breach by the case managers. The public body stated that these employees now understand that the disclosure of the salary information in this case constituted a privacy breach because the information disclosed was not limited to the minimum amount necessary and was therefore an unauthorized disclosure.

MPI indicated that both employees have since reviewed Corporate Directive G.27 – Confidentiality of Personal Information and Personal Health Information, which requires that the personal information of claimants be properly protected and ensures that the collection, use, disclosure, storage, and destruction of such information by MPI takes place in accordance with the provisions of FIPPA.

Further, MPI also advised that to prevent this type of event from occurring again it has made changes to the "Engagement of Services" template form to remove the section where the income

information was included, and this information will now only be included on the form when specifically necessary. The public body stated that all PIPP staff have been made aware of this change and indicated that follow up reminders will also be issued to staff going forward.

In our view, the steps taken by MPI to address this unauthorized disclosure were both reasonable and appropriate. Further to being notified of the complaint by our office, MPI acknowledged that this disclosure was not limited to the minimum amount of information necessary. In responding to this complaint, MPI not only retrieved the complainant's income information from the third parties to which the information had been disclosed but also took further steps to prevent similar disclosures from occurring in the future. Specifically, MPI changed the standardized template forms on which information would be compiled and reminded staff members of their responsibilities to limit the disclosure of personal information.

CONCLUSION

Our investigation found that the public body did not limit the amount of personal information disclosed as required by FIPPA. Accordingly, the complaint is supported. We are satisfied that the public body took reasonable and appropriate steps to address this unauthorized disclosure and prevent a reoccurrence of similar disclosures.

October 3, 2017
Manitoba Ombudsman