

Section Title: Board and Corporate Administration - Board Administration
Subject: Information Protection, Access and Disclosure
Effective Date: January 1, 2023

A. POLICY STATEMENT AND PURPOSE

The WCB collects, uses and discloses personal information and personal health information in administering *The Workers Compensation Act* (the Act) and fulfilling its mandate. Core WCB business activities such as adjudicating and managing claims (including reconsideration and appeal), registering employers, collecting assessments, and administering programs such as Return to Work and the Prevention Rebate, all require the collection, use and disclosure of information.

The WCB is also responsible for protecting all personal information and personal health information in its custody and control. This includes protecting the privacy of workers, employers and other stakeholders, and maintaining confidentiality over the information it collects.

These activities are governed by the Act (in particular, section 101), as well as *The Freedom of Information and Protection of Privacy Act* (FIPPA) and *The Personal Health Information Act* (PHIA), all of which impose rules on the WCB's collection, use, disclosure, retention and destruction of information.

This policy provides the WCB's framework for information protection, access and disclosure. It sets out what types of information can be shared, with whom, and for what purposes. It has three parts:

Part 1: Privacy Protection

Part 2: Disclosure

Part 3: Unauthorized Access or Release

B. PART 1: PRIVACY PROTECTION

Accountability and Transparency

The WCB is responsible for protecting the confidentiality of personal information and personal health information it has in its custody and control, disclosing only that information which is necessary to carry out its mandate.

Organizational accountability is supported through a dedicated Privacy Officer, this policy, and corporate policies governing confidentiality, privacy incident and breach management, and, information storage, security and access. The WCB also protects the confidentiality of information through information sharing agreements. All WCB staff and contractors sign confidentiality agreements and receive regular privacy training.

The WCB's corporate policies on Confidentiality, Privacy and Information Technology are available upon request.

Consent

The WCB obtains consent in order to collect, use and disclose personal information and personal health information unless otherwise permitted or required by law.

Limited Collection, Limited Use

The WCB limits the collection of personal information and personal health information to that which is necessary to administer the Act. The WCB uses and discloses personal information and personal health information only for the purposes for which it was collected, except where permitted or required by law.

Protections and Safeguards

The WCB protects information by managing it in a secure environment whenever it is stored, transferred, or disposed of. The WCB has safeguards in place to protect against loss, theft, and unauthorized access and disclosure of information in its custody. These include:

- Limiting access to personal information and personal health information to those who need it to carry out their job functions;
- Ensuring security of buildings and systems;
- Conducting mandatory privacy training for all employees;
- Updating technological safeguards to protect information that is collected, accessed and disclosed over the Internet;
- Enforcing internal and external privacy and security policies; and
- Developing retention schedules for the secure disposal of records.

C. PART 2 - DISCLOSURE**1. DISCLOSURE OF CLAIM FILE INFORMATION**

The WCB does not disclose information concerning a worker to anyone without the written authorization of the worker, a worker's dependant (in the case of a worker fatality), or their agents. The only exceptions to this rule are when disclosure is permitted or required by law, or as outlined in this section of the policy, below.

1.1. Worker and Agent

The WCB will provide workers, or, in cases of worker fatality, their dependants, with a copy of their claim file upon written request. If a worker or dependant has appointed an agent to act for them, and the WCB has been provided with evidence of this, the claim file will also be provided to the agent upon written request.

Statutory provisions in FIPPA, PHIA and the Act limit the disclosure of specific types of information. In most cases, these restrictions are designed to protect third party interests. Examples of information that may not be disclosed include:

- Personal information of third parties compiled by the WCB or a government department or agency as part of an investigation into a violation of the Act, or another enactment;
- Legal opinions with solicitor/client privilege of the WCB, its solicitors, and other third parties;
- Information obtained in confidence by the WCB from a government department/agency; and
- Information that could harm individuals or public safety if disclosed.

1.2. Employer and Agent

General Disclosure

Employers shall have access to reasons for decision/decision letters, Return to Work plans and related materials (e.g., functional abilities information) associated with their worker's claim files, along with information on employer claim costs, and any other information the WCB decides is necessary for employers to fulfil their obligations under the Act. If an employer has appointed an agent to act for them, and has provided the necessary documentation to the WCB, the information will also be provided to the agent upon written request.

Any other information on a worker's claim file will only be disclosed to employers or their agents if the worker consents to this disclosure in writing, or the disclosure is authorized by this policy or by law (e.g., the Act, FIPPA, PHIA, or another enactment).

Employers and agents must hold all claim file information in the strictest confidence, limiting access to those in the company who need it for a purpose under the Act. They are also required to use claim file information only for the purpose for which the WCB authorized its release.

Reconsideration and Appeal Disclosure

Employers who are parties to a reconsideration or appeal of a claim decision, and their agents, are entitled to disclosure of **relevant claim file information**. The WCB determines relevance based on whether the information is necessary to address the issue(s) under dispute in the claim.

Employers and their agents must make all requests to access claim file information, other than claim file information the WCB automatically provides to them, in writing. The request must specify the name of the designated individual at the company to whom the information may be disclosed.

Prohibition Against Misuse of Claim File Information

Employers and their agents are prohibited from using claim file information obtained for the purposes of reconsideration or appeal for any other purpose, without prior written permission of the WCB. Employers and agents who do so both commit an offence and may subject to an administrative penalty under the Act.

Requirement to Destroy Claim File Information

Employers and their agents are also required to destroy all copies of claim file information they have obtained for the purposes of reconsideration or appeal within 60 days, unless they make a submission regarding the reconsideration or appeal within that 60-day period. They must also notify the WCB of the documents' destruction. Employers and agents who fail to do so may be subject to an administrative penalty under the Act.

Worker Notification

Before the WCB releases claim file to an employer or their agent, the WCB will notify the worker, dependent, or their agent, of the information it intends to release, and provide them with a period of time to object to the release in writing. The WCB will consider the objections, will decide whether to release the information, and if so, whether to release it with or without conditions. If the worker is dissatisfied with the WCB's decision on the release of information, they may ask the Chief Appeal Commissioner for a final decision on whether the information is relevant. Further details regarding the process used by workers to object to employer access may be found in the Administrative Guidelines.

1.3. Health Care Providers and Third Parties Disclosure

The WCB may disclose health care information regarding a worker's injury, including diagnoses and treatment, to health care providers for the purposes of managing the worker's recovery and return to work. The worker typically consents to share this information when they file their claim. In cases where consent has not been obtained at that time, consent must be obtained before the information will be released. In cases where a health care provider requests information that goes beyond what the WCB determines is necessary to manage the claim, a separate consent from the worker will be required.

Disclosure of claim file information to other third parties (e.g., government agencies or private insurers) requires written consent of the worker or agent, except where permitted by law.

2. DISCLOSURE OF EMPLOYER INFORMATION

2.1 Employer and Agent

The WCB stores employer information in a variety of different business applications and locations within the WCB. The WCB will provide employers and their agents with access to this information (the "employer file") at any time upon written request. Prior to providing the employer or agent with the employer file in its entirety, the WCB will engage with the employer or agent to pinpoint the specific information being sought.

While the employer and their agent are generally entitled to all information on the employer file, as in the case of workers and their claim file information, statutory provisions in FIPPA, PHIA and the Act serve to limit the disclosure of specific types of information. In most cases, the statutory restrictions on disclosure are designed to protect third party interests.

Except where permitted or required by law or provided for in this policy, the WCB does not disclose information concerning the employer to anyone else without the written authorization of the employer or employer's agent.

2.2 Disclosure to Others

Disclosure of information contained in the employer file can occur in the following types of situations:

- Employer account status: other employers or legal counsel may request information regarding an employer's account status in the context of the relationship between principals and contractors (e.g., through the clearances system);
- Financial audits: a WCB auditor conducting a financial audit of an employer's account may discuss the information with the employer's accountant;
- Sale or bankruptcy: the WCB may disclose employer information in situations involving the sale or transfer of a business or a bankruptcy proceeding;
- Industry Based Safety Programs (IBSP): the WCB may disclose relevant employer information to promote safety through their industry sector; and
- Prevention: benchmarking activities where permissible.

Additional rules about the employer file disclosures in situations such as these are contained in the Administrative Guidelines.

3. DISCLOSURE TO THIRD PARTIES

Disclosure of claim or employer file information is generally limited to situations identified above, but for clarity, the following circumstances permit information from claim or employer files to be disclosed to third parties:

- The worker or employer has authorized release of the information;
- The information is required by a party with a direct interest in a reconsideration or appeal;
- Disclosure is specifically authorized by FIPPA or PHIA¹;
- Disclosure is required by third parties in a legal proceeding, or financial collection proceeding (i.e., collection agencies);
- Disclosure is authorized by an information sharing agreement;
- Disclosure is necessary under the Cost Recovery Agreement between the WCB and Manitoba Public Insurance (MPI); and
- Disclosure is initiated by the WCB for its own lawful purposes (see below).

In all of these circumstances, only the minimum amount of necessary information is provided.

4. WCB DISCLOSURE (WCB USE OF INFORMATION)

The Act authorizes the WCB to use and share information in its custody in the course of administering the Act and carrying out its mandate. Some of the scenarios where the WCB may use or share information include:

- In support of WCB Compliance activities;
- Assisting government in administering *The Workplace Safety and Health Act*;
- Providing advice to the Minister or Cabinet;
- Pursuant to requests from the Manitoba Ombudsman;
- Sharing information with other workers compensation boards for the purposes of administering interjurisdictional claims; and
- Statistical information (i.e., aggregate) for research purposes, such as through the Association of Canadian Workers Compensation Boards (AWCBC).

The same privacy principles and the rules of PHIA and FIPPA still apply to these scenarios.

D. PART 3: UNAUTHORIZED ACCESS AND DISCLOSURE

In the event of unauthorized access or disclosure of personal information or personal health information, the WCB must take immediate steps to contain and recover the personal information. Following containment, the WCB must investigate the incident to determine who was affected, what type of information was accessed or disclosed, and the cause of the unauthorized access or disclosure. Affected individuals are to be notified, as appropriate. The WCB must then take all necessary remedial

¹Both FIPPA and PHIA permit disclosure of information without consent in certain exceptional circumstances, such as to law enforcement agencies for law enforcement purposes.

actions to prevent further privacy breaches. Privacy breaches are recorded and reported by the WCB's Privacy Officer.

Complaints and Inquiries

Individuals concerned about a potential privacy breach or with questions regarding the privacy and protection of personal information and personal health information, may contact the WCB's Privacy Officer. If, following investigation, an individual is unsatisfied with the WCB's response, they may escalate the complaint to the provincial Ombudsman under *The Ombudsman Act*.

E. REFERENCES

The Workers Compensation Act, in particular, subsections 101(1), 101(7), and 109.7(1)

The Freedom of Information and Protection of Privacy Act

The Ombudsman Act

The Personal Health Information Act

The Workplace Safety and Health Act

History:

1. New policy approved by Board Order No. 30/22 on September 29, 2022 effective January 1, 2023. This replaces three previous policies, repealed effective January 1, 2023: 21.50.10, *Disclosure of File Information*, 21.50.40, *Disclosure of File Information - Employer Access*, and 21.50.50, *Release of Statistical Information*.