

17 March 2015

Lee M
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Dear Lee M

Official Information Act 1982 Request - Response

Thank you for your request of 24 February 2015 asking for the following information. ACC is happy to provide a response under the Official Information Act 1982 (Act):

Question 1:

Sub-section 72(1)(c) of the Accident Compensation Act provides that a responsibility of an ACC claimant "must, when reasonably required to do so by the Corporation - authorise the Corporation to obtain medical and other records that are or may be relevant to the claim."

Given that Section 72 of the Accident Compensation Act carries the heading "Responsibilities of claimant WHO RECEIVES ENTITLEMENT", and that sub-section 72(1) states; "A claimant WHO RECEIVES ANY ENTITLEMENT must, when reasonably required to do so by the Corporation - authorise the Corporation to obtain medical and other records that are or may be relevant to the claim", what legal requirement is there for an ACC claimant who is NOT RECEIVING ANY ENTITLEMENT to "authorise the Corporation to obtain medical and other records that are or may be relevant to the claim" (with ENTITLEMENTS only starting once the ACC has assessed the claim and approved cover)?

Question 2:

Does Section 72 of the Accident Compensation Act apply to ACC claimants who are NOT receiving ENTITLEMENTS but where an ACC45 form has been electronically submitted to the ACC by the claimants' doctor, the ACC is either assessing the claim or has assessed the claim and has advised the claimant that it decided to decline cover and the claimant has applied for a review of that decision?

Question 3:

The ACC claim process begins with the completion and submission of an ACC45 claim form to the ACC. This can be done by the patient/claimant manually completing an ACC45 claim form, or, by the patient's/claimant's doctor electronically completing an ACC45 claim form.

Where an ACC45 form was completed and submitted by a patient's/claimant's doctor electronically, and in a situation where the patient/claimant was not shown the original or a

copy, or given a copy, of the ACC45 form completed by the patient's/claimant's doctor, the patient did not sign the ACC45 form and the patient's/claimant's doctor did not discuss or mention any issue to do with the patient/claimant related to 'patient authority and consent' to obtain or release the patient's/claimant's private health information, what legally established authority would be there for the ACC to request the doctor who completed the ACC45 form to release the patient's/claimant's private health information to the ACC?

Question 4:

In the above described circumstances - refer question 3 - and bearing in mind the provisions of sub-sections 56(4)(a) and (b) and 57(3)(a) and (b) of the Accident Compensation Act that require the ACC to "make a reasonable request to the person (claimant), or decide to make a request to another person, for the additional information; and if the Corporation proposes to make a request to another person for the additional information, tell the person making the claim (claimant) about the making of the request and its nature ..."; would it be a breach of the Accident Compensation Act if the ACC was to make a request for "additional information" to the doctor who had completed the ACC45 form, and, the ACC had NOT complied with sub-section 56(4)(b) or 57(3)(b) as applicable (it failed to tell the claimant about making the request and its nature)?

Question 5:

In the case of a work related gradual process claim; would it be a breach of the patient's/claimant's privacy rights (provided in various instruments of law) if the ACC sent an old/outdated blank ACC271 form to the patient's/claimant's doctor without complying with the provision of sub-section 57(3)(b) of the Accident Compensation Act (with Section 57 of the Accident Compensation Act applying to work related gradual process claims), with a request for the doctor who had completed the ACC45 form) to complete and return the aforementioned form to the ACC, and when the wording across the top of the aforementioned form clearly states; "xxx (patient's/claimant's name) has authorised ACC to collect information needed to determine cover for their injury, by completing the Patient Declaration on the ACC45 ACC Injury Claim Form", but where the ACC45 form was completed and submitted by the patient's/claimant's doctor electronically not manually, and in a situation where the patient/claimant was not shown the original or a copy, or given a copy, of the ACC45 form completed by the patient's/claimant's doctor, the patient did not sign the ACC45 form, and the patient's/claimant's doctor has also not discussed any 'patient authority and consent' to obtain or release the patient's/claimant's private health information?

Question 6:

What other section/s of the Accident Compensation Act, if any, authorises the ACC to obtain medical and other records from any other party/ies that are or may be relevant to an ACC claim?

Question 7:

What section of the Accident Compensation Act, if any, authorises the ACC to obtain medical and other records from any other party/ies that are or may be relevant to an ACC claim, where an ACC45 form was completed and submitted by a patient's/claimant's doctor electronically, and in a situation where the patient/claimant was not shown the original or a

copy, or given a copy, of the ACC45 form completed by the patient's/claimant's doctor, the patient did not sign the ACC45 form and the patient's/claimant's doctor did not discuss or mention any issue to do with the patient/claimant related to 'patient authority and consent' to obtain or release the patient's/claimant's private health information?

Response

In response to questions 1, 2, 3, 6 and 7, ACC refers you to section 55 of the Accident Compensation (AC) Act as it provides for a client's responsibilities, "...to assist in establishment of cover and entitlements...".

Under the Act a person who lodges a claim has a responsibility to provide ACC with any relevant information that the Corporation requires to determine cover and/or entitlements, and authorise the Corporation to obtain medical records and any records that are, or may be relevant to the claim.

A client is also required to provide ACC with Medical Certificates, attend and participate in medical assessments by a registered health professional, or assessments specified by the Corporation, at the Corporation's expense.

Questions 4, and 5, are considered to be requests for legal advice, which is not an Official Information Act request.

You have the right to make a complaint to the Office of the Ombudsmen. You can call them on 0800 802 602, 9am to 5pm weekdays, or write to:

The Office of the Ombudsmen
P O Box 10 152
WELLINGTON 6143

Yours sincerely

Advisor
Government Services