



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
— for —
British Columbia

Order P06-03

TALLY-HO MOTOR INN

David Loukidelis, Information and Privacy Commissioner
September 18, 2006

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Summary: The complainant's manager told other organization employees that the complainant had made a complaint of unsanitary conditions to WorkSafeBC. This was not reasonable for the purposes of managing the employment relationship and was not otherwise authorized under PIPA.

Key Words: employee personal information—managing an employment relationship.

Statutes Considered: *Personal Information Protection Act*, ss. 18 and 19(2)(a), (b).

1.0 INTRODUCTION

[1] This decision stems from the complainant's allegation that his employer disclosed his personal information contrary to the *Personal Information Protection Act* ("PIPA"). The complainant was employed in a pub or bar located in the hotel known, at the time, as the Tally-Ho Motor Inn. The complainant contacted WorkSafeBC, which is responsible for workplace health and safety matters, with his concerns about what he believed were unsanitary conditions in the bar. It appears that WorkSafeBC inspected the bar and concluded the conditions were not unsanitary. A manager of the bar later told two other employees, who were responsible for the cleanliness of the bar, about the complaint to WorkSafeBC and told them the complainant made the complaint. No other personal information about the complainant was disclosed.

[2] The complainant considered this to be a violation of his privacy, since he had not consented to the disclosure of his identity in this way. In his complaint to this Office, the complainant alleged that his employer had disclosed "private

information” about his “claim” to WorkSafeBC “to persons he should not have given it to, who used it to embarrass me”. He added that he had “tried to retrieve” the information, but that “no one will respond to me”. In terms of the remedy the complainant sought, he asked this Office to “correct the damage and teach management how to deal with private information.”

[3] Because the complaint was not resolved in mediation, an inquiry was held under Part 11 of PIPA.

2.0 ISSUE

[4] The notice of inquiry issued by this Office stated the issue as being whether the disclosure of the complainant’s personal information “was authorized by s. 19” of PIPA. As the notice of inquiry indicated, s. 51 of PIPA, which deals with the burden of proof in certain matters arising under PIPA, is silent with respect to the burden of proof in cases of this kind. The notice said that each party should provide information and arguments to justify its position on the issue.

3.0 DISCUSSION

[5] **3.1 Which Organization Is Involved?**—The incident that prompted the complaint occurred in April of 2004. The Traveller’s Inn Hotel Group Ltd. (“Traveller’s Group”) made submissions in the inquiry, saying that, at the time of the incident, it did not own the hotel that employed the complainant, then known as the Tally-Ho Motor Inn (“Tally-Ho”):

1. The incident complained of is alleged to have occurred on April 2, 2004 (the “Incident”).
2. On April 15, 2004, Traveller’s took over operation of the hotel from the Tally-Ho Motor Inn and began operating the hotel as the “Vacation Inn”.
3. The complainant brought his complaint against the Tally-Ho Motor Inn in February of 2005.
4. The Incident occurred before Traveller’s assumed ownership, management or control of the hotel business in which the Incident occurred.
5. The *Personal Information Protection Act*, S.B.C. 2003, Chapter 63 (the “Act”) makes no provision for continuation in the instances of a change in ownership of an “organization” subjected to an inquiry.

6. The Act does not assign responsibility to a new owner for any breaches of the Act made by a former owner of an “organization” subjected to an inquiry.
7. The bar and lounge in which the complainant was employed (the “Bar”) has been leased by Traveller’s since July 1, 2004 to 0698073 B.C. Ltd., conducting business as “Murph’s Place”.
8. 0698073 B.C. Ltd. is a separate and distinct entity in which Traveller’s has neither ownership interest nor managerial control. Current employees of the Bar are not employees of Traveller’s.
9. Due to the lack of Traveller’s current involvement in the operation of the Bar, they have no control over proper implementation of the Act with regards to the Bar.

[6] Accordingly, Traveller’s Group says, it is not a proper party in this inquiry.

[7] The complainant says he agrees with, or does not take issue with, paragraphs 1 through 5 of this submission. He adds, however, that there is confusion as to who now operates the bar at the hotel in which he was employed.

[8] I accept that, at the time of the incident in question, the complainant was employed by an organization other than the Traveller’s Group, *i.e.*, he was employed by the Tally-Ho Inn. Traveller’s Group had no role to play in the events in question here, so nothing in this decision reflects on that organization. (Similarly, the hotel bar in question is now operated under lease by yet another organization and nothing in this decision reflects on that organization.)

[9] **3.2 Nature of the Information**—The personal information in issue here is the complainant’s name. In the circumstances, his name is undoubtedly “employee personal information” as defined in PIPA:

“**employee personal information**” means personal information about an individual that is collected, used or disclosed solely for the purposes reasonably required to establish, manage or terminate an employment relationship between the organization and that individual, but does not include personal information that is not about an individual’s employment.

[10] The complainant’s employer knew his name because of, and for the purposes of, his employment. The complainant’s name is undoubtedly employee personal information as defined in PIPA. An individual’s name is “reasonably required” to establish, manage and terminate an employment relationship. It would be an unusual employment relationship if an organization could hire someone without knowing his or her identity.

[11] **3.3 Did the Sharing of the Complainant's Name Violate PIPA?—**

The notice of inquiry stated that the issue is whether disclosure of the complainant's name violated s. 19 of PIPA and submissions were made on that basis. Because of this, I will assume for discussion purposes only that the sharing of the complainant's name with other employees of the same organization constituted a disclosure of information and not a use of that information. I will leave for another day consideration of whether such circumstances involve a disclosure or a use of employee personal information (or perhaps both).

[12] Submissions by the Traveller's Group on the merits suggest there was no breach of PIPA because the complainant implicitly consented to disclosure of his name.¹ It says the owner and manager of the hotel at the time "freely admits he shared the outcome of the complainant's complaints" with "two staff members, specifically the maintenance manager and the opening bartender at the time." These individuals "were responsible for sanitation in the pub."²

[13] Traveller's Group says the complainant had made "his concerns about sanitation and working conditions common knowledge among management and co-workers by *inter alia* noting various problems in the daily activity log."³ He also made it known to management and co-workers that "he intended to go to" WorkSafeBC "with regard to his concerns."⁴ The complainant, by contrast, says he did not discuss his sanitation complaint "until confronted by fellow staff who heard about my claim" from other staff; he says he was "confronted by staff who should not have known I had a claim with" WorkSafeBC.⁵

[14] The evidence conflicts as to whether the complainant consented to disclosure of his name to other employees of the organization. Against the suggestion that the complainant had made his concerns, and his intention to complain, common knowledge in the workplace, I have the complainant's denial of this. He says rather that other employees "confronted" him after he complained, and objects to his name having been disclosed. I am not prepared to find in these circumstances that the complainant consented to disclosure of his identity in relation to the complaint he made.

[15] The question remains, was disclosure of his name reasonable for the purposes of managing the complainant's employment relationship with the organization? I find for the following reasons that it was not.

¹ Traveller's Group takes the position that it is not a proper party to this proceeding and made submissions on the merits in the alternative to its clearly expressed position on that issue, which I have already addressed.

² Paras. 16 and 17, initial submission.

³ Para. 13, initial submission.

⁴ Paras. 13 and 14, initial submission.

⁵ Para. 13, reply submission.

[16] Sections 18 and 19 of PIPA read as follows:

Disclosure of personal information without consent

- 18(1) An organization may only disclose personal information about an individual without the consent of the individual, if
- (a) the disclosure is clearly in the interests of the individual and consent cannot be obtained in a timely way,
 - (b) the disclosure is necessary for the medical treatment of the individual and the individual does not have the legal capacity to give consent,
 - (c) it is reasonable to expect that the disclosure with the consent of the individual would compromise an investigation or proceeding and the disclosure is reasonable for purposes related to an investigation or a proceeding,
 - (d) the personal information is collected by observation at a performance, a sports meet or a similar event
 - (i) at which the individual voluntarily appears, and
 - (ii) that is open to the public,
 - (e) the personal information is available to the public from a source prescribed for the purposes of this paragraph,
 - (f) the disclosure is necessary to determine suitability
 - (i) to receive an honour, award or similar benefit, including an honorary degree, scholarship or bursary, or
 - (ii) to be selected for an athletic or artistic purpose,
 - (g) the disclosure is necessary in order to collect a debt owed to the organization or for the organization to repay an individual money owed to them by the organization,
 - (h) the personal information is disclosed in accordance with a provision of a treaty that
 - (i) authorizes or requires its disclosure, and
 - (ii) is made under an enactment of British Columbia or Canada,
 - (i) the disclosure is for the purpose of complying with a subpoena, warrant or order issued or made by a court, person or body with jurisdiction to compel the production of personal information,
 - (j) the disclosure is to a public body or a law enforcement agency in Canada, concerning an offence under the laws of Canada or a province, to assist in an investigation, or in the making of a decision to undertake an investigation,
 - (i) to determine whether the offence has taken place, or

- (ii) to prepare for the laying of a charge or the prosecution of the offence,
 - (k) there are reasonable grounds to believe that compelling circumstances exist that affect the health or safety of any individual and if notice of disclosure is mailed to the last known address of the individual to whom the personal information relates,
 - (l) the disclosure is for the purpose of contacting next of kin or a friend of an injured, ill or deceased individual,
 - (m) the disclosure is to a lawyer who is representing the organization,
 - (n) the disclosure is to an archival institution if the collection of the personal information is reasonable for research or archival purposes,
 - (o) the disclosure is required or authorized by law, or
 - (p) the disclosure is in accordance with sections 19 to 22.
- (2) An organization may disclose personal information to another organization without consent of the individual to whom the information relates, if
- (a) the individual consented to the collection of the personal information by the organization, and
 - (b) the personal information is disclosed to the other organization solely
 - (i) for the purposes for which the information was previously collected, and
 - (ii) to assist the other organization to carry out work on behalf of the first organization.
- (3) An organization may disclose personal information to another organization without consent of the individual to whom the information relates, if the organization was authorized by section 12(2) to collect the personal information from or on behalf of the other organization.

Disclosure of employee personal information

- 19(1) Subject to subsection (2), an organization may disclose employee personal information without the consent of the individual.
- (2) An organization may not disclose employee personal information without the consent of the individual unless
- (a) section 18 allows the disclosure of the employee personal information without consent, or
 - (b) the disclosure is reasonable for the purposes of establishing, managing or terminating an employment relationship between the organization and the individual.

- (3) An organization must notify an individual that it will be disclosing employee personal information about the individual and the purposes for the disclosure before the organization discloses employee personal information about the individual without the consent of the individual.
- (4) Subsection (3) does not apply to employee personal information if section 18 allows it to be disclosed without the consent of the individual.

[17] As regards s. 19(2)(a), there is no suggestion that any of the non-consensual disclosure provisions of s. 18 apply and in any case there is no support for this in the material at hand.

[18] Turning to s. 19(2)(b), it was of course reasonable for the manager to tell employees responsible for bar sanitation that a complaint had been made to WorkSafeBC and to tell them the outcome of the investigation. This information would put them on notice that concerns had been raised, giving them an opportunity and incentive to ensure that the bar was kept in a sanitary condition. It was not necessary, however, for these employees to know the identity of the individual who had made the complaint, whether it was another employee or a customer of the bar. That information could have no plausible bearing on the substance of the matter.

[19] There is no basis in the material before me on which one can conclude that disclosure of the complainant's identity was for a purpose related to management of his employment relationship with the organization. Further, even if the disclosure could be said to have had some bearing on management of that employment relationship, it was in my view not reasonable within the meaning of s. 19(2)(b) of PIPA. The employees to whom the information was disclosed did not reasonably need to know the identity of the complainant in order to address any concerns or issues about sanitation, about the complainant or about WorkSafeBC's investigation of the complaint. The upshot is that Tally-Ho was not authorized to disclose the complainant's name in the circumstances.

[20] It should also be said that this case does not stand for the proposition that the name of a complainant can never be used or disclosed in the employment setting. That issue will have to be resolved another day, but it should be noted here that there may be cases where the identity of an employee who has made a complaint can be disclosed or used within the organization without falling afoul of s. 19. To take only one example, if an employee were to accuse another employee of harassment, the accused employee could be hard-pressed to defend himself or herself against the charges without knowing the particulars, which would very likely involve disclosing the accuser's identity.

4.0 CONCLUSION

[21] This disclosure technically violated PIPA. It is worth noting, however, that the incident occurred very shortly after PIPA came into force. It is also worth underscoring that, given the nature of the complainant's complaint to WorkSafeBC and the circumstances of the disclosure, in my view what happened here did not by any means amount to a serious breach of privacy.

[22] Section 52(3) of PIPA is the source of remedial authority in this case. In relevant part, it provides that I "may, by order," require an organization to stop disclosing personal information in contravention of PIPA. There is no indication that disclosure of the complainant's name is ongoing. The Tally-Ho disclosed the personal information some time ago. It no longer owns or manages the bar in question. It is not even clear if the complainant still works in the bar, although there are indications he does not. In the circumstances, although I have found that a violation of PIPA technically occurred, I decline to make an order under s. 52(3).

September 18, 2006

ORIGINAL SIGNED BY

David Loukidelis
Information and Privacy Commissioner
for British Columbia

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