



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

Order P07-02

655369 B.C. LTD.

David Loukidelis, Information and Privacy Commissioner

November 29, 2007

Quicklaw Cite: [2007] B.C.I.P.C.D. No. 37

Document URL: <http://www.oipc.bc.ca/orders/OrderP07-02.pdf>

Summary: The organization, through one of its employees, improperly disclosed the complainant's employee personal information to a co-worker, who then disclosed it to the union. The organization is ordered not to disclose such employee personal information in such circumstances in the future.

Statutes Considered: *Personal Information Protection Act*, s. 18, s. 19.

1.0 INTRODUCTION

[1] An employee of 655369 B.C. Ltd. ("organization"), which operates a retail store in the Victoria area, complained to this office under the *Personal Information Protection Act* ("PIPA") that the organization, her employer, improperly disclosed her personal information to a co-worker. She said that the co-worker had telephoned a representative of the United Food and Commercial Workers Union ("UFCW"), which represents employees of the store, about her concern that the complainant was not entitled to the holidays that she had booked. According to the complainant, her co-worker accurately related to the UFCW representative the exact amount of paid holiday time that the complainant had remaining to her credit at the time of the call.

[2] The complainant learned of this from her UFCW representative and wrote a letter to her employer to complain that the organization must have disclosed her personal information, in the form of information about her paid holiday entitlement, to the co-worker. The store's owner responded in writing several days later by saying that, having investigated the matter with the co-worker who made the call and with "the management team members present at the store this

week”, it concluded that no management personnel disclosed the information to any employee and therefore no PIPA breach had occurred.

[3] The complainant then made her complaint to this office. Because the matter did not settle in mediation, an inquiry was held under Part 11 of PIPA.

2.0 ISSUE

[4] The Notice of Written Inquiry this office issued said the issue is whether the organization “inappropriately disclosed the complainant’s employee personal information contrary to s. 19” of PIPA.

[5] The Notice of Written Inquiry stated that s. 51 of PIPA establishes the burden of proof and places it on the organization. While I have concluded that the outcome of this matter would not have been any different had the burden been correctly stated, s. 51 does not allocate the burden in this kind of case. Section 51 of PIPA reads as follows:

Burden of proof

51 At an inquiry into a decision to refuse an individual

- (a) access to all or part of an individual’s personal information,
- (b) information respecting the use or disclosure of the individual’s personal information, or
- (c) the names of the sources from which a credit reporting agency received personal information about the individual,

it is up to the organization to prove to the satisfaction of the commissioner that the individual has no right of access to his or her personal information or no right to the information requested respecting the use or disclosure of the individual’s personal information or no right to the names of the sources from which a credit reporting agency received personal information about the individual.

[6] Section 51 addresses the burden of proof only in the three kinds of cases described in paragraphs (a) through (c). As noted in Order P06-01,¹ PIPA has no burden of proof provision for other issues that can arise for adjudication in a Part 11 inquiry, meaning that each party should provide information and arguments to justify its position on the issue.

¹ [2006] B.C.I.P.C.D. No. 29.

3.0 DISCUSSION

[7] **3.1 Is This Employee Personal Information**—The first question is whether information about the employee’s remaining vacation entitlement is “employee personal information” within the meaning of PIPA. The organization effectively argues that this is the case in saying that it disclosed the information in accordance with the terms of its collective agreement with the UFCW and that it did not contravene s. 19 of PIPA, which is the section which authorizes disclosure of employee personal information.

[8] PIPA defines employee personal information as follows:

“**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;

[9] The parties made no submissions on whether the information in issue is “employee personal information”. However, information about the amount of paid holiday time an employee is entitled to take is, in my view, information that is reasonably required to maintain an individual’s employment relationship with an organization. I therefore accept that information about the paid holiday time the complainant had remaining to her at the time of her complaint is captured by the definition set out above.

[10] **3.2 Was There a Disclosure?**—The next issue is whether a disclosure occurred. The complainant says that holiday time at the organization is allotted according to seniority and alleges that the co-worker, who had less seniority, wanted to take her holidays at the same time as the complainant. She says that the exact amount of paid vacation time to which she was entitled was disclosed to the co-worker, who should not have access to her vacation entitlement information.

[11] The complainant provided a signed statement from the union representative who received the telephone call from the co-worker. The union representative states that the co-worker wanted to know how an employee—*i.e.*, the complainant—who “had no paid vacation time left” could still take vacation time.

[12] The organization provided the following response to the complaint:

- The only employee of the organization “with access and knowledge” of the exact amount of the complainant’s remaining paid vacation time was the store administrator;

- The store administrator received a verbal request for this information from the complainant's union representative some time before the complaint;
- The store administrator confirmed that she provided the union representative with the complainant's exact amount of vacation time;
- This was the only time the store administrator disclosed this information to anyone;
- She disclosed the information in the belief that the union representative was entitled to this information under the collective agreement between the organization and the UFCW union local; and
- No one employed by the organization disclosed information about the complainant's vacation time contrary to s. 19 of PIPA.²

[13] The complainant acknowledges that the store administrator is the only person with access to information about her vacation time. She also admits that she had earlier asked her UFCW representative to find out from the organization—presumably the store administrator, although this is not clear—the precise amount of paid vacation time remaining to her. She says she did so only after a management employee had contacted her twice about whether the complainant was entitled to two weeks holiday. She points out that it was not the management employee who contacted the union representative, but the co-worker.³

[14] The complainant indicates that the store administrator is a different individual from the management employee who called her about her vacation entitlement and alleges that the store administrator is a personal friend of the co-worker who called the union representative.⁴ The complainant also alleges that this management employee revealed the information about her vacation time to the co-worker.⁵

[15] The complainant and the organization agree that the organization disclosed information about the complainant's vacation time to the union representative. This was apparently in order to deal with the management employee's questions about whether the complainant was entitled to holidays she had booked later in the year. The complainant does not take issue with this disclosure, however, and in fact acknowledges that the disclosure occurred at her request. I therefore do not need to decide whether this disclosure met the requirements of s. 19 of PIPA. Rather, the issue is whether the alleged

² Organization's initial submission. The organization did not provide a reply submission.

³ Complainant's reply submission.

⁴ Complainant's reply submission.

⁵ Para. 1, complainant's initial submission. The complainant does not say how she thinks this management employee allegedly acquired the information about the complainant's vacation time. Nor is this otherwise clear from the submissions.

disclosure to the co-worker occurred and, if it did, whether this disclosure complied with s. 19 of PIPA.

[16] I accept the complainant's argument and evidence that the co-worker knew the information about her holiday time and that the only way the co-worker could have known this information was to obtain it from the organization. The material before me, in its entirety, reasonably supports the inference that someone associated with the organization did disclose the complainant's personal information to the co-worker, who then contacted the UFCW to raise concerns.

[17] The organization has offered no evidence from that co-worker about what did or did not occur. It asserts only that it has canvassed the matter with its management team⁶ and says that the store administrator, the only individual who would know that information, denies having disclosed it to anyone other than the union representative. The organization did not identify, much less offer an affidavit from the store administrator⁷ or the management employee or otherwise provide evidence from those involved to counter the information the complainant has submitted. I find that the organization, through an employee, did disclose the employee's employee personal information to the complainant's co-worker.

[18] **3.3 Did the Disclosure Comply With PIPA?**—Section 19 of PIPA authorizes disclosure of employee personal information and incorporates a reference to s. 18. Section 19 reads as follows:

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

⁶ Organization's initial submission. I note that the organization's initial response to the complaint states that the store owner spoke with both the employee in question and management personnel on hand at the time.

⁷ The complainant names the store administrator in her reply submission.

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.

[19] Section 18 of PIPA, which sets out the circumstances in which personal information may be disclosed, states the following:

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.
- (4) An organization may disclose personal information to another organization, or to a public body, without consent of the individual to whom the information relates, if

- (a) the personal information was collected by an organization under section 12 (1) (k) or (l),
- (b) the disclosure between the organizations, or between the organization and the public body, is for the purposes for which the information was collected,
- (c) the disclosure is necessary for those purposes, and
- (d) for each disclosure under this subsection, the third party referred to in section 12 (1) (k) or (l), as applicable, consents to the disclosure.

[20] It is clear from the material before me that the complainant did not authorize the disclosure of information about her holiday time to the co-worker. There is also no suggestion that the co-worker had a job-related need for this information. Indeed, the contrary is suggested. Certainly, I see no plausible basis for concluding that the disclosure was “reasonable for the purposes of establishing, managing or terminating an employment relationship between the organization and the individual.” Nor do any of the parts of s. 18 apply. To conclude, nothing in the material before me supports a finding that s. 19 in the circumstances at hand authorized disclosure of the complainant’s personal information by the organization to the complainant’s co-worker.

[21] I find in the circumstances that the disclosure of employee personal information to the complainant’s co-worker was in violation of s. 19 of PIPA.

4.0 CONCLUSION

[22] As was the case in Order P06-03,⁸ this disclosure occurred just over a year after PIPA came into force and was a one-time disclosure, now in the past, of information that, while it is “employee personal information”, was not of a particularly sensitive nature. Having said this, in contrast to the situation in Order P06-03, under s. 52(3)(e) of PIPA, I require the organization, specifically the numbered company mentioned earlier in this decision, to stop disclosing employee personal information in contravention of PIPA in circumstances such as those described in this order.

November 29, 2007

ORIGINAL SIGNED BY

David Loukidelis
Information and Privacy Commissioner
for British Columbia

OIPC File No. P05-25931

⁸ [2006] B.C.I.P.C.D. No. 29.