



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

Order P08-01

**KLAHANIE HOUSING CO-OPERATIVE**

Michael McEvoy, Adjudicator  
April 16, 2008

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**Summary:** The applicant requested his personal information contained in two letters under the control of the Klahanie Housing Co-operative. The Co-operative was required to refuse disclosure under ss. 23(4)(c) and (d) of PIPA.

**Statutes Considered:** *Personal Information Protection Act*, ss. 23(4)(c), (d) and 23(5); *Freedom of Information and Protection of Privacy Act*, s. 22(1).

**Authorities Considered: B.C.:** Order P06-02, [2006] B.C.I.P.C.D. No. 28.

## 1.0 INTRODUCTION

[1] This decision arises from a request by the applicant for records about himself and his family held by the Klahanie Housing Co-operative (“Co-operative”) of which he is both a member and a resident. The Co-operative responded by arranging for the applicant and family members to view the file containing the personal information requested and to identify records to be copied for a minimal fee. The viewing did not take place and the applicant filed a request for review under the *Personal Information Protection Act* (“PIPA”) with this Office.<sup>1</sup> The applicant was afterward granted access to all but four of the records he requested, which the Co-operative withheld, saying it was required to do so under ss. 23(4)(c) and (d) of PIPA. Further mediation by this Office resulted in the records in dispute in the review being reduced to two. These are letters<sup>2</sup> written by other members of the Co-operative. As the matter did not

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<sup>1</sup> Portfolio Officer’s Fact Report, para.2.

<sup>2</sup> I will use the terms “letters” and “records” interchangeably throughout this Order to describe the records in dispute.

settle in mediation, an inquiry was held under Part 11 of PIPA. Certain third parties, who were given notice of this inquiry under s. 48(1)(b) of PIPA, did not make submission.

## 2.0 ISSUE

[2] The issue in this inquiry is whether the Co-operative was required to withhold the remaining two letters under ss. 23(4)(c) and (d) of PIPA.

[3] Section 51 establishes the burden of proof in inquiries. The relevant portions read as follows:

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

...

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 ....

## 3.0 DISCUSSION

[4] **3.1 Background**—The applicant is a long-time member and resident of the Co-operative who says he is having health difficulties.<sup>3</sup> The applicant's daughter lives with him in his Co-operative unit and he has tried on several occasions, without success, to persuade the Co-operative's board to permit his daughter to become an associate member. The purpose of doing so is to allow her to have a voice in her father's affairs with respect to the Co-operative. Most recently, the applicant says, his attempts have failed because of false and malicious allegations made against him and his daughter in the two letters which are in dispute here. The applicant believes these two letters are designed to further a vendetta based on hatred of him and his daughter.<sup>4</sup>

[5] The applicant says he seeks the letters because he anticipates they will play a paramount role in an ongoing proceeding in which he is involved before the Human Rights Tribunal. That proceeding also involves his daughter and concerns allegations by the applicant against the Co-operative under the *Human Rights Code*.<sup>5</sup>

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<sup>3</sup> Applicant's initial submission, p. 2, para. 1.

<sup>4</sup> Applicant's initial submission, p. 2, para. 2

<sup>5</sup> Applicant's initial submission, p. 1, para. 2.

[6] The applicant contends that the letters contain erroneous, malicious and libellous allegations against him and his daughter and that, without the opportunity to review and rebut their contents, it will allow further prejudice against him and his family members.<sup>6</sup> In support of his case, the applicant has provided several documents to me, many of them letters from the Co-operative board, expressing concerns about whether the applicant is in compliance with the Co-operative's rules and regulations. These are accompanied by responses from the applicant's representatives.<sup>7</sup>

[7] **3.2 Disclosure of Other Individuals' Personal Information—**Section 23 of PIPA gives individuals a right of access to their own personal information in the hands of an organization:

***Access to personal information***

- 23(1) Subject to subsections (2) to (5), on request of an individual, an organization must provide the individual with the following:
- (a) the individual's personal information under the control of the organization;
  - (b) information about the ways in which the personal information referred to in paragraph (a) has been and is being used by the organization;
  - (c) the names of the individuals and organizations to whom the personal information referred to in paragraph (a) has been disclosed by the organization.

[8] This right is subject to certain exceptions. Those in issue here are as follows:

- 23(4) An organization must not disclose personal information and other information under subsection (1) or (2) in the following circumstances: ...
- (c) the disclosure would reveal personal information about another individual;
  - (d) the disclosure would reveal the identity of an individual who has provided personal information about another individual and the individual providing the personal information does not consent to disclosure of his or her identity.

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<sup>6</sup> Applicant's initial submission, p. 2, paras. 3 and 4.

<sup>7</sup> A summary of the documents are found at p. 3 of the applicant's initial submission.

[9] The Co-operative argues there are five reasons why it is required to withhold the two disputed letters<sup>8</sup>:

1. The two letters in question contain names of third parties.
2. It is not possible to sever the records without disclosing the identity of the individual or individuals who wrote them.
3. The individual or individuals who sent the letters do not consent to the disclosure of their identity. The letters in question would disclose this information.
4. The files contain personal information about another individual or individuals.
5. Disclosure would reveal the identity of the individual or individuals who provided the personal information and they do not consent to this disclosure.

[10] The Co-operative argues that revealing personal information about another individual and revealing the identity, without consent, of an individual who has provided personal information about another individual is contrary to ss. 23(4)(c) and (d) of PIPA.

[11] The applicant replies that he is only interested in the truth and that the Co-operative is promoting a double standard because his affairs and those of his family have been published in the minutes of the Co-operative's annual general meeting without his consent.<sup>9</sup> The applicant also argues that the names in the letters could be blacked out, asking "[w]hy are the individuals so concerned about being identified if their comments are valid and truthful?"<sup>10</sup> In conclusion, the applicant asks that the individuals identified in these letters "stand-up and prove their words and stop hiding behind legislation."<sup>11</sup>

[12] The Co-operative takes issue with most of the material in the applicant's submission but states that, in any event, it is irrelevant to the issue before me. The Co-operative denies that it seeks to perpetuate any ill will against the applicant and says it is merely complying with its obligations under PIPA.

### ***Personal information of others***

[13] Section 23(4)(c) of PIPA requires an organization to refuse disclosure of information where the disclosure "would reveal personal information about another individual." The Commissioner has noted that this provision differs from

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<sup>8</sup> Co-operative's initial submission, p. 1.

<sup>9</sup> Applicant's reply submission, p. 2, para.1.

<sup>10</sup> Applicant's reply submission, p. 2, para. 2.

<sup>11</sup> Applicant's reply submission, p. 3.

the disclosure provisions found in s. 22 of the *Freedom of Information and Protection of Privacy Act* (“FIPPA”).<sup>12</sup> Section 22(1) of FIPPA requires a public body to refuse to disclose personal information the disclosure of which would be an “unreasonable invasion” of a third party’s “personal privacy”. Section 23(4)(c) of PIPA, while mandatory like s. 22 of FIPPA, does not involve deciding whether or not disclosure would unreasonably invade another individual’s personal privacy. The test is simply whether disclosure would reveal the personal information of another individual. If so, the organization must withhold the information.

[14] I have reviewed the records in dispute in light of the statutory framework contained in PIPA and have no difficulty concluding that both letters contain the personal information of another individual. Disclosure of that personal information would contravene s. 23(4)(c).

### ***Identity of others***

[15] The Co-operative also relies on s. 23(4)(d) of PIPA, which prohibits disclosure of information where it would “reveal the identity of an individual who has provided personal information about another individual and the individual providing the personal information does not consent to the disclosure of his or her identity.” My review of the letters leaves no doubt that their disclosure would reveal the identity of individuals who have provided personal information about another individual. I am also satisfied, based on the evidence provided by the Co-operative that the individuals providing the personal information do not consent to its disclosure.<sup>13</sup>

[16] **3.3 Removal of Information**—It is not disputed that the letters contain the applicant’s personal information. The applicant argues that the names of other individuals in the letters could be blacked out and the remaining information disclosed to him. Section 23(5) provides that, if the Co-operative is “able to remove” the information referred to in ss. 23(4)(c) and (d) from the letters, it must then provide the applicant with access to his personal information. However the Co-operative asserts that it is not possible to provide any information in the letters without disclosing the identity of the individuals who wrote them.

[17] After carefully reviewing the letters, I concur with the Co-operative’s position. It is evident to me from the submissions and the disputed letters themselves that the Co-operative is a small community where residents are intimately familiar with one another. In the circumstances of this case the nature of the letters is such that nothing in them could be disclosed without revealing the identity of the writers. Given that ss. 23(4)(c) and (d) apply to the entirety of the

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<sup>12</sup> Order P06-02, [2006] B.C.I.P.C.D. No. 28.

<sup>13</sup> Co-operative’s reply submission, p. 1.

letter's content, I am satisfied that the Co-operative has complied with its duty under s. 23(5) of PIPA.

#### **4.0 CONCLUSION**

[18] For the reasons given above, under s. 52 of PIPA, I require the Co-operative to refuse the applicant access to the information that the Co-operative withheld under ss. 23(4)(c) and (d) of PIPA.

April 16, 2008

#### **ORIGINAL SIGNED BY**

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Michael McEvoy  
Adjudicator

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