



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

Order P11-01

MAINSTREAM ASSOCIATION FOR PROACTIVE COMMUNITY LIVING

Michael McEvoy, Adjudicator

February 18, 2011

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Summary: The applicant requested information concerning an investigation the Association conducted into a workplace complaint he made. The Association provided some records and withheld other information. The Association was required to withhold the disputed information from the applicant because it would reveal personal information about another individual. Further, the disclosure of the requested information would also reveal the identity of individuals who provided personal information about another individual. Those former individuals did not consent to the disclosure of their identities and therefore the Association was required to withhold it. Finally, because the applicant's personal information and the other individual's personal information were inextricably intertwined, the Association was not able to remove the other individual's personal information and leave any intelligible information to disclose.

Statutes Considered: *Personal Information Protection Act*, ss. 3(2)(f) and 23(4)(c), (d).

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

1.0 INTRODUCTION

[1] This order arises from a request by an applicant on October 22, 2009, for all his personal information in the custody of Mainstream Association for Proactive Community Living ("Association"). This included information related to an investigation the Association undertook in response to an employment-related complaint he made.

[2] The Association provided a number of records to the applicant but withheld other information, because it said that, under s. 3(2)(f), PIPA did not apply to personal information contained in notes of a draft decision maker in an administrative proceeding. It also included with its response a copy of ss. 23(4)(c) and (d) of PIPA. These provisions require an organization to withhold information that would reveal personal information of another individual or, that would reveal the identity of an individual who provided personal information about another individual and who did not consent to the disclosure of their identity.

[3] On December 9, 2009, the applicant asked the Office of the Information and Privacy Commissioner (“OIPC”) to review the Association’s decision. Mediation did not resolve the matter, and the applicant requested the issues proceed to inquiry.

[4] The Association notified third parties affected by this request and confirmed they did not wish to participate. The OIPC issued the Notice of Inquiry to the applicant and the Association on November 18, 2010, and the inquiry closed January 7, 2011.

2.0 ISSUES

[5] The Association did not make submissions with respect to s. 3(2)(f) of PIPA in this inquiry. I take the Association to have abandoned this position and, therefore, will only consider whether ss. 23(4)(c) and (d) of PIPA require the Association to withhold the information in dispute.

[6] Under s. 51 of PIPA it is up to the Association to prove the applicant has no right of access to his personal information.

3.0 DISCUSSION

[7] **3.1 Background**—The applicant says the Association denied him work shifts when he complained about harassment on the part of a coworker.¹ He complained, and the Association conducted an investigation under its policies and the requirements of a collective agreement. The Association interviewed a number of parties, including the applicant.² Neither the applicant nor the Association describes the precise outcome of the investigation, but I take it from the material the applicant files that he is not satisfied with its conclusion. Essentially, the applicant wants to see any other investigation material not already provided to him.

¹ Applicant’s initial submission, p. 1.

² Association’s initial submission, para. 3.

[8] **3.2 Records at issue**—There are 21 pages of records in dispute. They are:

- A. A memorandum of August 18, 2009 by an Association human resource person. It describes the chronology of events respecting the applicant's complaint.
- B. Minutes dated October 9, 2009, of a meeting between the applicant and Association human resources personnel concerning the applicant's complaint.
- C. Witness statements taken by Association human resources personnel related to the applicant's complaint.
- D. An undated memorandum which appears to outline the outcome of the investigation into the applicant's complaint.
- E. Meeting minutes concerning the investigation.
- F. The Association's emails relating to the preparation of an investigation of the applicant's complaint.

[9] **3.3** The relevant sections of PIPA at issue here are:

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; ...

...

(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.

(5) If an organization is able to remove the information referred to in subsection (3) (a), (b) or (c) or (4) from a document that contains personal information about the individual who requested it, the organization must provide the individual with access to the personal information after the information referred to in subsection (3) (a), (b) or (c) or (4) is removed.

Parties' arguments

[10] The Association submits that the two purposes of PIPA are: to ensure that organizations safeguard information from those who do not have authority to view it; and the entitlement of individuals to gain access to their personal information held by an organization.

[11] The Association argues it meets the first purpose and will continue to “maintain and safeguard the contents of the [i]nvestigation file from those not entitled to view it.”³ The investigation file, it says, “clearly contains the identities and personal information” of certain employees and those employees have not consented to its disclosure.

[12] In the case of the second purpose of PIPA, the Association submits it has two competing obligations under PIPA: first, to the applicant and second, to its other employees. It argues that providing the investigation file to the applicant would place the Association in breach of its obligations under PIPA to its other employees. It contends this would also have the effect of curtailing any future employee participation in investigations.⁴

[13] The Association submits it is not reasonable to remove the information, or redact the names of the employees who are not the applicant as provided for by s. 23(5) of PIPA. It says this is because there are so few parties involved in the investigation that redaction would not suffice to protect each of the employees' own rights to privacy as contemplated by PIPA.

[14] The applicant argues the information he seeks directly links to his employment and information he gave to the Association's human resource person doing the investigation (“investigator”). The applicant describes in detail the circumstances of the alleged harassment. He describes how, in his view, he was intentionally denied the opportunity to work certain shifts. He argues the investigator denied him the opportunity to adduce “collateral evidence” in spite of the investigator's promise that he could.⁵ The applicant submits he is entitled to redacted information concerning other employees because the other parties involved with his complaint “have waived any and all privileges”⁶ regarding his complaint. The applicant also provides a decision under the *Human Rights Code* involving himself and the Association. He also appends an affidavit sworn in conjunction with a judicial review petition of that decision.

Issues I cannot review

[15] Before considering each of the records at issue, I need briefly to address two aspects of the applicant's submission over which I do not have authority.

³ Association's initial submission, p. 3.

⁴ Association's initial submission, pp. 3 and 4.

⁵ Applicant's initial submission, para. 6.

⁶ Applicant's initial submission, para. 7.

The first concerns the allegations of harassment the applicant says ultimately resulted in the loss of work shifts. The second is the opportunity the applicant says the investigator denied him to present additional evidence. I am aware that these issues are important to the applicant. However, I have no jurisdiction to determine whether the workplace allegations are true or whether the investigation was fair. My inquiry is limited to the question of whether the Association has properly withheld certain information under PIPA. The issues the applicant raises including the human rights complaint are outside my authority and not relevant to these proceedings.

Analysis

[16] With respect to whether the Association has properly withheld certain information under s. 23(4)(c) of PIPA, Commissioner Loukidelis noted that this provision differs from s. 22 of the *Freedom of Information and Protection of Privacy Act* (“FIPPA”).⁷ 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 of personal information 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.

[17] I have carefully reviewed the records in dispute and find that each reveals personal information about individuals other than the applicant. In some instances, the applicant himself provided the personal information about those individuals. However, as I just noted, s. 23(4)(c) does not allow me to consider whether the disclosure of the information would unreasonably invade the other individuals’ privacy. It only permits me to consider whether it reveals their personal information and in this case, it does.

[18] The Association also relies on s. 23(4)(d) of PIPA. I agree with the Association that s. 23(4)(d) applies here. The records clearly contain the identities of individuals who provided information about another person. Further, the Association states that the individuals did not provide the Association’s human resource director consent to disclose the investigation file that reveals their identity.⁸ The applicant presumes to know the identity of these individuals. He goes on to contend these individuals have “waived any and all privileges” regarding the facts of this matter because of certain statements allegedly made by the Association’s investigator. First, I cannot confirm or deny whether the individuals the applicant names appear in the withheld information. Second, the issue here is not whether individuals “waived privileges” but whether they consented to the disclosure of their personal information. The applicant

⁷ Order P06-02, [2006] B.C.I.P.C.D. No. 28.

⁸ Association’s initial submission, p. 3.

does not explain what the investigator said or why it would indicate that the individuals identified in the records consented to the disclosure of their personal information. PIPA requires the personal information of these individuals to be withheld, unless they consent to it being disclosed and based on the material before me they have not. I therefore see no merit in the applicant's "waiver" argument. To summarize, s. 23(4)(d) of PIPA applies here because the disclosure of the disputed information would reveal the identity of individuals providing personal information about another individual. Moreover, the individuals providing the information have not consented to the disclosure of their identity.

[19] Finally, I must determine under s. 23(5) whether the Association is "able to remove" the information referred to in ss. 23(4)(c) and (d) from the letters because, if so, the Association must provide the applicant with access to his personal information. The Association asserts that, because there are so few parties involved in the investigation and resulting records, redaction of the records would not suffice to protect the privacy of the other individuals as contemplated by PIPA.

[20] After reviewing each of these records, I agree with the Association. The references to the applicant and other individuals in the records are inextricably intertwined. Therefore, it is not possible to remove the personal information of other individuals in the records and leave any intelligible information to disclose. Additionally, in some instances, releasing any personal information in the records would necessarily disclose the identity of another individual who provided the personal information at issue.

[21] Therefore in respect of all of the records in issue, I am satisfied the Association has complied with its duty under s. 23(5).

4.0 CONCLUSION

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

February 18, 2011

ORIGINAL SIGNED BY

Michael McEvoy
Adjudicator