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Order P14-03

CANADIAN FOREST PRODUCTS LTD.

Ross Alexander
Adjudicator

November 17, 2014

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Summary: The applicant requested information from Canadian Forest Products Ltd. in relation to a workplace investigation. Canfor withheld portions of an investigation report under ss. 23(4)(c) and (d) of PIPA. The adjudicator determined that Canfor was required to withhold all of the withheld information under s. 23(4)(c) because disclosure would reveal personal information about one or more individuals other than the applicant.

Statutes Considered: *Personal Information Protection Act*, s. 23(4)(c).

OIPC BC Orders Considered: Order P11-01, 2011 BCIPC 9 (CanLII); Order P12-01, 2012 BCIPC 25 (CanLII).

INTRODUCTION

[1] This inquiry relates to a request by an applicant to Canadian Forest Products Ltd. (“Canfor”) for information about a workplace investigation in 2003. The applicant was the subject of the investigation.

[2] Canfor initially withheld the entire report that resulted from the workplace investigation. However, it released a redacted copy of the report to the applicant after he requested a review from the Office of the Information and Privacy Commissioner (“OIPC”).

[3] Canfor is withholding the remaining information in the report pursuant to ss. 23(4)(c) and (d) of the *Personal Information Protection Act* (“PIPA”). Section 23(4)(c) relates to disclosure that would reveal personal information about another individual and s. 23(4)(d) relates to information that would reveal the identity of an individual who has provided personal information about another individual.

[4] The OIPC review process did not resolve this matter, and the applicant requested that it proceed to inquiry.

ISSUE

[5] The issue in this inquiry is whether Canfor is required to refuse access to information in the report pursuant to ss. 23(4)(c) and (d) of PIPA.

DISCUSSION

[6] **Background** — The applicant is a former employee of Canfor.¹ In 2003, while the applicant was a Canfor employee, another employee complained that the applicant had harassed him. Canfor investigated this complaint.

[7] Canfor's investigation determined that the applicant had violated its harassment policy by bringing two photographs into the workplace and deliberately making them available for others to view. The investigator determined that the reason the applicant brought the photographs to the workplace was for others to view them and conclude that the complainant was receiving special treatment or favouritism from Canfor. Canfor advised the applicant that he had violated the harassment policy, although there was no formal discipline of the applicant arising from the complaint.²

[8] The applicant disagreed that he had violated Canfor's harassment policy and he filed a grievance, which the applicant's union declined to take forward to arbitration. The applicant filed a complaint with the Labour Relations Branch ("LRB") under the *Labour Relations Code*, alleging that the union had breached its duty of fair representation towards him in declining to take his grievance to arbitration. The applicant is particularly concerned about Canfor's investigation because there was some suggestion by a representative of Canfor that it had decided the incident with photographs was "sexual harassment" against another male employee.

[9] The applicant's complaint to the LRB resulted in multiple LRB and BC Supreme Court decisions, and one BC Court of Appeal decision. Ultimately, it was determined that the union had not breached the *Labour Relations Code* by failing to take his grievance to arbitration, in part because Canfor's investigation and findings did not result in the applicant being disciplined.

[10] **Preliminary Matter** — In the applicant's submissions, he addresses and responds to the information in the investigation report that Canfor has already disclosed to him. He does not address PIPA, or whether s. 23(4)(b) or (c) of PIPA apply to the withheld information in the report. His submissions are primarily an explanation about the 2003 incident, why this incident did not constitute harassment, and why Canfor's

¹ The applicant worked at Canfor until the operation he worked at was permanently closed. There is no suggestion that the complaint at issue here is why the applicant no longer works for Canfor.

² Canfor did advise the applicant that it would be conducting training sessions for all employees so that they would better understand the definition of harassment as set out in the harassment policy.

investigation process was unfair. However, I have no jurisdiction to determine whether the applicant contravened Canfor's harassment policy or whether Canfor's investigation was fair. This inquiry is limited to whether Canfor is properly withholding certain information in the report under PIPA.

[11] **Analysis** — Section 23 of PIPA requires organizations to provide individuals with their own personal information on request, subject to certain exceptions. Section 23 states in part:

- (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.

[12] Section 23 of PIPA requires organizations to provide applicants with their personal information, unless the organization is authorized or required to withhold the personal information under ss. 23(3) or (4).³ In this case, ss. 23(4)(c) and (d) are the only provisions under ss. 23(3) or (4) that are at issue.

[13] Turning to s. 23(4)(c), this provision is about whether disclosure of withheld information would reveal personal information of people other than the applicant. It is not consideration of whether the information ought to be disclosed to the applicant. The test under s. 23 of PIPA is not to be confused with s. 22 of the *Freedom of Information and Protection of Privacy Act*, in which public bodies must consider whether disclosure of personal information would unreasonably invade another individual's personal privacy in determining whether to disclose information to an applicant. As stated by Adjudicator McEvoy in Order P11-01, the test for s. 23(4)(c) of PIPA is

³ Section 22(2) of PIPA places a further requirement on credit reporting agencies to disclose additional information.

“...simply whether disclosure would reveal the personal information of another individual. If so, the organization must withhold the information.”⁴

[14] The applicant says he seeks the report because he wants to confirm that there is no finding of sexual harassment against him in the report. Further, the applicant is already aware of a significant amount of the withheld information, some of which is publicly available in LRB and court decisions regarding this dispute. However, while these and other factors may favour disclosure of the information on public policy grounds – or support a finding that disclosure of the withheld information would not be an unreasonable invasion of personal privacy – they are not relevant for determining whether ss. 23(4)(c) and (d) apply in this case.

[15] Section 23(1) of PIPA will require Canfor to provide the applicant with the withheld information if it is the applicant’s personal information, unless it is also the personal information about another individual under s. 23(4)(c) (or falls under s. 23(4)(d)). Section 1 of PIPA defines “personal information” as follows:

"personal information" means information about an identifiable individual and includes employee personal information but does not include

- (a) contact information, or
- (b) work product information;

[16] The record at issue is an investigation report arising from a workplace complaint investigation. I have carefully reviewed the report, and I find that the withheld information contains information about multiple identifiable individuals.⁵ The information is reasonably capable of identifying particular individuals because it either directly identifies the person or enables an accurate inference to be made as to their identity when combined with other available sources of information or due to the context of the information within the report.

[17] The definition of personal information in PIPA excludes “contact information” and “work product information”. The information in dispute in this inquiry is clearly not “contact information.” However, I will address whether any of the withheld information is “work product information”.

[18] Section 1 of PIPA defines work product information as follows:

"work product information" means information prepared or collected by an individual or group of individuals as a part of the individual's or group's responsibilities or activities related to the individual's or group's employment or business but does not include personal information about an individual who did not prepare or collect the personal information.

⁴ Order P11-01, 2011 BCIPC 9 (CanLII) at para. 16.

⁵ One of the individuals is Canfor’s investigator who drafted the report, since it contains her opinions and decisions.

[19] The information at issue is contained in an investigation report in relation to workplace interactions between the applicant, the complainant and other individuals. One of these other individuals is the investigator who prepared or collected this information as part of her employment responsibilities and activities, and then provided her opinions and decisions in the report. Therefore, to the extent the withheld information is about the investigator, it is not her personal information because it is her work product information. However, the withheld information is not the work product information of the applicant, the complainant and other individuals because they did not prepare or collect this information as part of their responsibilities or activities related to their employment.⁶ Therefore, the information about the applicant, the complainant and other individuals is their personal information.

[20] While the information in dispute is the personal information of the applicant, I find that all of the withheld information is also the personal information of the complainant or another third party.⁷ This personal information is intertwined, so it is not possible to disclose personal information of the applicant to the applicant without also disclosing the personal information of others, as is contemplated in s. 23(5) of PIPA.

[21] In summary, I find that Canfor must not disclose the withheld information because it would reveal personal information about another individual pursuant to s. 23(4)(c). Given this finding, it is unnecessary for me to also consider s. 23(4)(d).

CONCLUSION

[22] For the reasons given above, under s. 52 of PIPA, I order that Canfor is required to refuse access to the withheld information in the report under s. 23(4)(c) of PIPA.

November 17, 2014

ORIGINAL SIGNED BY

Ross Alexander, Adjudicator

OIPC File No. P12-50728

⁶ I note that if this information was the work product information of the other individuals – such as the complainant – it would also be work product information of the applicant.

⁷ Canfor has already disclosed some of the applicant's personal information in the investigation report to the applicant.