



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
for British Columbia

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Order P17-04

THE GREEN CEILING

Carol Whittome
Adjudicator

October 5, 2017

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Summary: An applicant requested copies of her employment records. Approximately five months later, the organization still had not provided the applicant with the records. The adjudicator found that the organization has not fulfilled its duties under ss. 28 and 29 of *Personal Information Protection Act* and ordered it to provide the response by November 17, 2017.

Statutes Considered: *Personal Information Protection Act*, ss. 28 and 29.

OIPC B.C. Orders Considered: Order P14-02, 2014 BCIPC 10 (CanLII).

INTRODUCTION

[1] This case is about the failure of The Green Ceiling (Organization) to comply with its duty to assist and provide a response to an applicant under ss. 28 and 29 of the *Personal Information Protection Act* (PIPA). The request is for records relating to the applicant's employment at the organization.

[2] The applicant requested the Office of the Information and Privacy Commissioner (OIPC) to review the Organization's failure to provide the records responsive to her request. Mediation failed to resolve all of the issues in dispute

and they proceeded to inquiry. The Organization did not provide submissions for this inquiry.¹

ISSUE

[3] The issues to be decided in this inquiry are as follows:

1. Did the organization comply with its duties under s. 28 of PIPA?
2. Did the organization fail to respond to the applicant's request within the legislated timelines set out in s. 29(1) of PIPA?

[4] Section 51 of PIPA sets out the burden of proof in the inquiry process, and the Organization has the burden to prove that the applicant has no right to her own personal information.

DISCUSSION

Background

[5] The chronology of events is as follows:

- On May 7, 2017, the applicant requested copies of some of her employment records.²
- On May 7, the Organization responded to her request and informed her that her employment records were with the bookkeeper and would not be immediately available.
- On May 17, the applicant asked the Organization if the records were ready.
- On May 20, the Organization responded that the bookkeeper was away and the Organization was "looking over the timesheets to see if there is any pay owed" and "we are working on a few items and that is in the queue."
- On June 7, the applicant followed up with the Organization. The Organization responded and advised that it would receive the

¹ The OIPC sent the inquiry documents to the Organization via registered mail and delivery was confirmed on September 1, 2017. The Organization's submissions were due on September 11, 2017 but the Organization chose not to make submissions or request an extension.

² The applicant describes the employment records as "sign in/sign in & out/time sheets" and "pay slips/pay cheque receipts"; I will refer to these collectively as her "employment records".

employment records “by early next week” and it would email them to her at that time.

- The applicant had subsequent conversations with the Organization but it failed to provide her with the requested records or its reasons for not doing so.³

Sections 28 and 29 – Duty to Assist and Time Limit for Response

[6] PIPA imposes obligations on an organization to respond to information requests within certain timelines. The relevant sections of PIPA are as follows:

Duty to assist individual

28 An organization must make a reasonable effort

- (a) to assist each applicant,
- (b) to respond to each applicant as accurately and completely as reasonably possible, and
- (c) unless section 23 (3), (3.1) or (4) applies, to provide each applicant with
 - (i) the requested personal information, or
 - (ii) if the requested personal information cannot be reasonably provided, with a reasonable opportunity to examine the personal information.

Time limit for response

29 (1) Subject to this section, an organization must respond to an applicant not later than

- (a) 30 days after receiving the applicant's request, or
- (b) the end of an extended time period if the time period is extended under section 31.

...

[7] I have considered the Investigator’s Fact Report and the applicant’s request to the OIPC to review the Organization’s decision not to provide the responsive records within the legislated timeframe. Absent any response or explanation from the Organization to counter that information, I find that the

³ Investigator Fact Report.

Organization did not provide the applicant with the type of response required by s. 28 within the time frame required by s. 29 of PIPA.

[8] The usual remedy in such cases is to order the organization, pursuant to s. 52 of PIPA, to respond to the request by a particular date,⁴ and it is my view that this is the appropriate remedy in these circumstances.

CONCLUSION

[9] I have determined that The Green Ceiling failed to meet its duty to respond to the applicant under s. 28 within the legislated timelines in s. 29(1) of PIPA. Pursuant to s. 52 of PIPA, I order The Green Ceiling to give the applicant access to this information by November 17, 2017. The Green Ceiling must concurrently copy the OIPC Registrar of Inquiries on its cover letter to the applicant, together with a copy of the records.

October 5, 2017

ORIGINAL SIGNED BY

Carol Whittome, Adjudicator

OIPC File No.: P17-70505

⁴ See, for example, Order P14-02, 2014 BCIPC 10 (CanLII).