



OFFICE OF THE  
INFORMATION &  
PRIVACY COMMISSIONER  
FOR BRITISH COLUMBIA

Order P21-03

## GREEN PLANET WHOLESAL

Elizabeth Barker  
Director of Adjudication

February 26, 2021

CanLII Cite: 2021 BCIPC 11

Quicklaw Cite: [2021] B.C.I.P.C.D. No. 11

**Summary:** A complainant alleged that the organization failed to comply with its duty under s. 28 of PIPA to assist the complainant and respond to him as accurately and completely as reasonably possible. The adjudicator found that the organization complied, for the most part, with its duty under s. 28. However, it did not comply when it provided some contradictory and erroneous information in response to a part of the access request involving employee personal information. The complainant also complained about two fees the organization assessed. The adjudicator found that one fee was moot because PIPA did not apply to that information. She ordered the other fee be revised and reduced to make it a minimal fee under s. 32(2). The complainant was given a timeline to let the adjudicator know if there is a dispute about whether the revised minimal fee should be further reduced or excused because it is not reasonable under s. 36(2)(c).

**Statutes Considered:** *Personal Information Protection Act*, ss. 1 (definitions), 2, 3(2)(a), 23, 28, 32(2), 36(2)(c) and 52(3)(c).

## INTRODUCTION

[1] The complainant in this case is a former employee of Green Planet Wholesale (Green Planet). He asked Green Planet to provide information from his personnel file and other information pursuant to the *Personal Information Protection Act* (PIPA). He also asked for information about how Green Planet had used his personal information and to whom it had been disclosed.

[2] Green Planet responded by answering the complainant's questions about how his personal information had been used and to whom it was disclosed. Green Planet refused access to some information under s. 23(3) and said it would only disclose the rest after the complainant paid two fees amounting to \$92,719.35.

[3] The complainant disagreed with this response and complained to the Office of the Information and Privacy Commissioner (OIPC) that Green Planet had failed to assist and respond as accurately and completely as reasonably possible (s. 28) and that the fees were neither minimal nor reasonable (ss. 32(2) and 36(2)(c)).<sup>1</sup> Mediation did not resolve the complaint and it proceeded to this inquiry and both parties provided written submissions.

[4] The complainant also requested a review of Green Planet's decision to refuse access to some of the requested information under s. 23(3). A separate OIPC file was opened to review that matter and it is not at issue in this inquiry.<sup>2</sup>

## **BACKGROUND**

[5] Green Planet is a privately held corporation that is in the business of providing wholesale distribution of products for indoor gardening, hydroponics and hobby greenhouses. The complainant is a shareholder of Green Planet and a former employee.<sup>3</sup>

[6] During the complainant's employment, he and Green Planet entered into an agreement about expectations for the complainant's behaviour (Last Chance Agreement). In early October 2018, Green Planet hired a private investigator to investigate the complainant's behaviour. Several days later, Green Planet terminated his employment.

[7] The complainant made his access request on February 7, 2019. Green Planet's response was provided on March 11, 2019.

[8] Approximately one week before he complained to the OIPC, the complainant commenced a civil claim for wrongful dismissal (lawsuit).<sup>4</sup> The trial is scheduled to start April 2021. Also, four months after commencing that lawsuit, the complainant filed a complaint with the Human Rights Tribunal alleging discrimination with respect to the termination of his employment (HRT matter).

## **PRELIMINARY MATTERS**

[9] Green Planet's submissions raise two issues that were not included in the notice of inquiry. It submits the s. 28 issue is moot and PIPA does not apply to some of the records the complainant requests. These two matters raise threshold

---

<sup>1</sup> He did not complain about what Green Planet said regarding how it was using his personal information and the names of the people it was disclosed to.

<sup>2</sup> OIPC file P19-81298.

<sup>3</sup> The complainant is also a shareholder of two other related companies and the director of a third related company.

<sup>4</sup> He complained on June 26, 2019 and the lawsuit was filed June 19, 2019.

questions that affect the issues in the notice of inquiry, so I need to decide them at the outset.

*Is the s. 28 issue moot?*

[10] Green Planet says the issue of whether it responded as accurately and completely as reasonably possible under s. 28 is moot because the complainant received all the responsive records during the course of the lawsuit. Green Planet submits that there is no longer a live controversy between the parties and a decision on the s. 28 issue will have no practical effect on the parties' rights.<sup>5</sup>

[11] Green Planet submits that the complainant is using the PIPA process for a reason entirely unrelated to the purposes of the legislation in order to advance his own interests in the ongoing litigation. It says that if there are relevant documents that he believes should be provided in the litigation, then there is a court process for him to make such a demand and he has not done so.<sup>6</sup>

[12] The complainant disputes Green Planet's claim that it provided all of the records responsive to his access request through the lawsuit or otherwise.<sup>7</sup> He also says Green Planet's document disclosure obligation in the lawsuit is wholly distinct from its obligations under PIPA and does not shield it from providing records responsive to the access request.<sup>8</sup> The complainant says that it was unreasonable to disclose the records responsive to his request seven months after he asked for them under PIPA.<sup>9</sup> As such, he submits the Organization has failed in its duty to assist him under s. 28 of PIPA.

[13] I am not persuaded by Green Planet's argument that the s. 28 issue is moot because it has disclosed all the responsive records. The complainant clearly disputes he received *all* the records. The parties' evidence about what records are responsive to the PIPA access request and what has been disclosed in the lawsuit is not sufficiently detailed for me to decide where they overlap. Thus, it is not clear that deciding the s. 28 issue is merely an academic exercise that would have no practical impact on the parties' rights.<sup>10</sup>

[14] Green Planet also seems to be suggesting that the existence of other procedures for access to information, like the *Supreme Court Civil Rules*, negate

---

<sup>5</sup> Green Planet's initial submission at paras. 41 and 53.

<sup>6</sup> Green Planet's initial submission at para. 50.

<sup>7</sup> Complainant's submission at paras. 24 and 32.

<sup>8</sup> Complainant's submission at para. 31.

<sup>9</sup> Complainant's submission at para. 34.

<sup>10</sup> See Order F16-10, 2016 BCIPC 12 at paras. 11-12 for a description of the principles of mootness.

or displace the rights of access under PIPA. That is not correct.<sup>11</sup> Section 3(5) of PIPA states:

If a provision of this Act is inconsistent or in conflict with a provision of another enactment, the provision of this Act prevails unless another Act expressly provides that the other enactment, or a provision of it, applies despite this Act.”

[15] Green Planet has not identified any enactment or provision that explicitly ousts or circumscribes the access rights under PIPA. Further, in previous orders under the *Freedom of Information and Protection of Privacy Act* (FIPPA), the Commissioner has rejected the notion that discovery under the *Rules of Court* or other processes displace the right of access under FIPPA.<sup>12</sup> I find the same applies in the context of PIPA. The fact that the complainant has other avenues of obtaining the requested records does not disentitle him from exercising his access rights under PIPA.

[16] In conclusion, I find that the issue of whether Green Planet complied with its obligations under s. 28 of PIPA is not moot.

*Does PIPA apply to the complainant’s personal emails?*

[17] The complainant’s access request has eight parts, one of which is for “a copy of any and all personal emails on my Company email account.” He disputes the \$92,451.95 fee that Green Planet assessed for access to these emails.

[18] Green Planet submits it should not have to respond to the complainant’s request for his personal emails because it is not “a proper request under PIPA.” Green Planet says it is important that the OIPC address this issue first as it goes to the validity of the PIPA request and may be determinative of the fee issue. It says:

Green Planet’s position is that it should not have to undertake this task at all. It must be remembered that [the complainant] is the one who chose to use his company email account for personal reasons. He was not required to do so. The personal emails are not personal information about [the complainant] that Green Planet collected, used or disclosed. Accordingly, they do not fall within the parameters of PIPA.<sup>13</sup>

---

<sup>11</sup> The same has been said numerous times in the context of the *Freedom of Information and Protection of Privacy Act*. See for example: Order F02-07, 2002 CanLII 42432 (BC IPC) at para. 20; Order F14-24, 2014 BCIPC 27 (CanLII) at para. 27; Order F17-40, 2017 BCIPC 44 (CanLII) at para. 4.

<sup>12</sup> See for example: Order F02-07, 2002 CanLII 42432 (BC IPC), para. 20; Order 02-23, 2002 CanLII 42448 (BC IPC), pp. 4-5; and Order 00-07, 2000 CanLII 7711 (BC IPC), pp.14-15; Order F14-24, 2014 BCIPC 27 (CanLII) at para. 27; Order F17-40, 2017 BCIPC 44 (CanLII) at para. 4.

<sup>13</sup> Green Planet’s initial submission at para. 57.

[19] Green Planet provides submissions about why PIPA should be interpreted as excluding an employee's personal emails on their work email account. It points out that PIPA's purposes are to govern the collection, use and disclosure of personal information by organizations (s. 2). Green Planet says that it did not collect the complainant's personal emails, and it has no interest in using or disclosing them.<sup>14</sup>

[20] The complainant believes Green Planet's position is misguided. He says his personal emails meet the definition of personal information in s. 1 of PIPA, and they are under the control of Green Planet. He submits that Green Planet has a duty to provide his personal information to him as set out in s. 23(1)(a).<sup>15</sup>

### *Findings*

[21] The purpose of PIPA is to govern the collection, use and disclosure of personal information by organizations in a manner that recognizes both the right of individuals to protect their personal information and the need of organizations to collect, use or disclose personal information for purposes that a reasonable person would consider appropriate in the circumstances.<sup>16</sup> PIPA gives individuals the right to access their own personal information that an organization has about them, and to ask for their personal information to be corrected if they think it is incorrect or incomplete.<sup>17</sup>

[22] However, PIPA does not apply in some circumstances, as set out in s. 3(2). Section 3(2)(a) says that PIPA does not apply to the collection, use or disclosure of personal information, if the collection, use or disclosure is for the personal or domestic purposes of the individual who is collecting, using or disclosing the personal information and for no other purpose.<sup>18</sup> For the reasons that follow, I find that s. 3(2)(a) applies to the complainant's personal information in his personal emails so PIPA does not apply.

[23] The following definitions in s. 1 of PIPA are relevant here:

"domestic" means related to home or family;

"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;

---

<sup>14</sup> Green Planet's initial submission at para. 61.

<sup>15</sup> Complainant's submission at para. 39.

<sup>16</sup> PIPA, s. 2.

<sup>17</sup> PIPA ss. 23, 24, 26 and 27.

<sup>18</sup> PIPA defines "domestic" as related to home or family. It does not define "personal".

"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;

"contact information" means information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual;

"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.

[24] The complainant has asked for any and all personal emails on his work email account. He does not specify what he means by the term "personal email". However, I understand he is not seeking emails that contain his "work product information" or his "contact information" as those are types of information he has no right to access under s. 23 of PIPA because they are not personal information. I conclude he wants emails that contain only information about his personal, home and family life and relationships. I am satisfied, therefore, that the information he seeks when he uses the term "personal emails" meets the definition of personal information in PIPA.

[25] I have also considered whether the requested emails contain "employee personal information". The complainant's submissions do not address that point. Green Planet's evidence is that it has no interest in collecting, using or disclosing the information in the complainant's personal emails. There is nothing, therefore, to suggest that the information in the requested emails is information Green Planet collected, used or disclosed solely for the purposes reasonably required to establish, manage or terminate an employment relationship between itself and the complainant. Based on the evidence available in this case, I find that the personal information in the requested emails is not the complainant's "employee personal information".

[26] In conclusion, I find the emails requested are those containing exclusively the complainant's personal information that he collected, used or disclosed for his personal or domestic purposes and for no other purposes. There is no evidence that Green Planet collected, used or disclosed any of the personal information in the complainant's personal emails. For those reasons, s. 3(2)(a) applies and it follows that PIPA does not apply to that personal information. The complainant has no right of access under PIPA to the information in the requested emails as a result.

[27] Given that PIPA does not apply, Green Planet is not required to respond any further to the complainant's request for copies of any and all personal emails on his Green Planet email account.

[28] I conclude that the issue of whether the \$92,451.95 fee for access to those emails is minimal or reasonable is now moot and I will not consider it. However, I will still make a determination about the \$267.40 fee charged for access to other records, which I will discuss in more detail below.

## ISSUES

[29] Given what I find above, the issues I will decide in this inquiry are the following:

1. Did Green Planet meet its obligations under s. 28 of PIPA?
2. Does the \$267.40 fee comply with s. 32(2) of PIPA?
3. Is the \$267.40 fee reasonable under s. 36(2)(c) of PIPA?

[30] Section 51 of PIPA sets out the burden of proof for certain issues but not the issues in this inquiry. Each party, therefore, must provide argument and evidence to justify its position on the issues.<sup>19</sup>

[31] I have carefully read all of the parties' evidence and submissions. In these reasons, I will address the parties' evidence and arguments only to the extent necessary to explain my decision respecting the inquiry issues. In particular, Green Planet's submissions and evidence contain extensive details of their communications with the OIPC investigator during mediation. Mediation takes place on a without prejudice basis, which means that the parties understand that mediation material will not be used during any subsequent inquiry. It would be improper for me to consider mediation material without the express agreement of the other party, and there is no indication of that here. As a result, I have not taken into account any mediation information or materials in the parties' submissions when making my decision.<sup>20</sup>

## ACCESS REQUEST AND RESPONSE

[32] I have reviewed the access request and the response and find them to be as described below.

[33] On February 7, 2019, the complainant asked Green Planet to provide him with copies of "any and all" of the following:

- a) his entire employment/personnel file;

---

<sup>19</sup> Order P10-03, 2010 BCIPC 48 (CanLII) at para. 5.

<sup>20</sup> Furthermore, what took place during mediation is about what took place *after* the March 11, 2019 response so is not at issue or the focus of this inquiry.

- b) his personal emails on his Green Planet email account;
- c) his executed employment contract(s) and amendments, contractor agreement(s), letters of understanding, performance reviews, job evaluations, etc. with Green Planet and and/or affiliated companies as well as communications and documents relating to the same;
- d) incident reports, medical reports, investigation reports, discipline records concerning him as well as communications relating to the same;
- e) his shareholders agreements, partnership agreements, or related documents with Green Planet and/or affiliated companies as well as communications and documents relating to the same;
- f) Eleven years of pay stubs, bank drafts, paycheques, expense reports, credit card reimbursements etc. relating to his employment with Green Planet and/or affiliated companies;
- g) extended health insurance and/or health care related benefit records related to his employment with Green Planet; and
- h) Eleven years of communications or other documents between directors and employees of Green Planet about his employment and cessation of his employment, including with a named investigation company.

[34] The complainant also asked for information about the ways in which Green Planet had, and is, using his personal information and the names of individuals and organizations to whom his personal information had been disclosed.

[35] On March 11, 2019, Green Planet's Chief Operating Officer (COO) sent a ten-page response to the complainant's access request. No responsive records accompanied the response. In the letter, Green Planet uses the same lettering (a) – (h) the complainant used in his request. I will do the same here.

[36] In its response, Green Planet explains how it used the complainant's personal information and to whom it had been disclosed. It also says it is withholding certain information under s. 23(3) of PIPA, specifically documents related to the investigation of the alleged breach of the complainant's employment contract and the Last Chance Agreement.

[37] Green Planet also says it is charging the complainant a \$92,719.35 fee, comprised of \$92,451.95 for responding to (b) and \$267.40 for responding to (e).

[38] **Records at (a):** Green Planet says that it will disclose benefit enrollment and banking records in response to (a), and these records are "employee personal information", so Green Planet is not authorized to charge a fee for them under PIPA. However, the letter also says that these records will be provided



once the complainant has “paid the aforementioned fee”. Green Planet also says that documents in (a) that relate to the investigation of the alleged breaches of his employment contract and the Last Chance Agreement are being withheld under s. 23.

[39] **Records at (b):** Green Planet says it searched the complainant’s employee email account and located 19,542 emails in his inbox, and it says it will not be able to complete its review of the records until the end of June 2019 at the earliest. It says it is taking a time extension under s. 31(1) of PIPA and it explains why. It says that the complainant can have access to the emails once he pays a \$92,451.95 fee and it explains how it is calculated.

[40] **Records at (c) and (d):** The letter says that Green Planet does not have any records listed in (c) and (d) other than documents related to the investigation and the Last Chance Agreement, which are being withheld under s. 23.

[41] **Records at (e):** Green Planet says that the records responsive to (e) are cheques paid to the complainant in his “capacity as a shareholder” and “annual corporate filings and related directors’ resolutions documents for the BC and Ontario registries for shareholding companies.” It says it will disclose these records after the complainant pays a \$267.40 fee and it explains how it calculated that amount. Green Planet also says that it will not disclose any communications with its lawyers regarding these matters and documents under s. 23 because they are protected by solicitor client privilege.

[42] **Records at (f):** Green Planet says that the records responsive to (f) are his paystubs and expense reports and they are “employee personal information”, so Green Planet is not authorized to charge a fee for them under PIPA. The letter, however, says that they can be provided to the complainant once he has “paid the aforementioned fee”.

[43] **Records at (g):** Green Planet says that the record responsive to (g) is an insurance benefits policy, which is “employee personal information” and Green Planet is not authorized to charge a fee for it. However, the letter says that this record will be provided to the complainant after he has “paid the aforementioned fee”.

**Records at (h):** Green Planet refuses to disclose this information for three reasons. It says that many of the requested communications are other individuals’ personal emails and were made for personal or domestic purposes so s. 3 applies and PIPA does not apply. It also refuses to disclose any communications with the private investigation firm under s. 23(3). It also says it refuses to disclose work product information or contact information (i.e., not personal information).

## SECTION 28

[44] Section 28 says the following about an organization's obligations to assist applicants:

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.

### ***Parties' submissions***

[45] The complainant alleges Green Planet failed to meet its duty under s. 28 because it:

- failed to reasonably assist him in relation to his access request;
- did not respond openly, accurately and without delay to his request; and
- took an unauthorized time extension to respond to his request.

[46] The complainant's support for his allegations consists of the following statements:

- Green Planet did not provide all of the requested records.<sup>21</sup>
- Green Planet refused under s. 23(3)(a) and (c) to disclose records relating to the instructions and information provided to the private investigator;<sup>22</sup>
- Green Planet did not disclose his personal emails;<sup>23</sup>
- It was unreasonable for Green Planet to use the lawsuit process to disclose records he asked for seven months earlier under PIPA.<sup>24</sup>

[47] Green Planet submits that it has met its obligation under s. 28 and made reasonable efforts to respond to the request.

---

<sup>21</sup> Complainant's submission at para. 30.

<sup>22</sup> Complainant's submission at paras. 33, 36 and 37.

<sup>23</sup> Complainant's submission at para. 33.

<sup>24</sup> Complainant's submission at paras. 34, 37.

[48] Although the complainant did not explicitly allege that Green Planet failed to conduct an adequate search, Green Planet provides submissions and evidence about that. Green Planet submits its obligation is to conduct an adequate search for records that a fair and rational person would find acceptable in all the circumstances, and it should not be held to a standard of perfection.<sup>25</sup> Green Planet says that it searched the complainant's former office space, his employee file cabinets, his computer and the digital compensation/payroll records kept by its financial controller.

[49] The COO says Green Planet copied the following records and provided them to Green Planet's lawyers:<sup>26</sup>

- the complainant's employee file.
- digital compensation/payroll records for payroll payments, expense reimbursements and dividend payouts to the complainant.
- A handful of items from the complainant's work computer that appeared to be of a personal nature (they related to the complainant's mother).

[50] The COO explains how Green Planet cannot confirm exactly when these records were provided to the complainant due to changes in Green Planet's lawyers and how some of the records were delivered.<sup>27</sup> He says that it later became apparent that some of the records had not been provided to the complainant's lawyers. The COO says Green Planet's lawyers have subsequently taken care of that and provided the missing information to the complainant's lawyers.<sup>28</sup> The COO says that it is his understanding that, with the exception of the emails, everything the complainant requested in his PIPA request has now been provided to him.<sup>29</sup>

[51] Green Planet says that all of the requested information was provided to the complainant's lawyers through document disclosure in the lawsuit and it indicates that this took place after January 6, 2020.<sup>30</sup>

[52] Green Planet says that it is refusing to disclose the information and instructions provided to the private investigator under s. 23(3)(c). It disputes the complainant's allegation that doing so is a failure to comply with s. 28.

### *Section 28 findings*

[53] I find that, for the most part, Green Planet's March 11, 2019 response complies with Green Planet's duty under s. 28. The response regarding most of

---

<sup>25</sup> Green Planet's initial submission at paras. 48.

<sup>26</sup> COO's affidavit at para. 15.

<sup>27</sup> COO's affidavit at para. 16.

<sup>28</sup> COO's affidavit at paras. 18 and 19.

<sup>29</sup> COO's affidavit at para. 16.

<sup>30</sup> Green Planet's initial submission at paras. 21 and 49.

the requested records was provided within the timelines required in PIPA and it contains the reason why access is being denied, i.e., because the requested records do not exist, they are being withheld under s. 23(3), a fee is owing for information that is not employee personal information, the information is not the complainant's personal information (i.e., it is work product or contact information) or s. 3 applies.

[54] However, I find that other parts of the response did not meet Green Planet's obligations under s. 28. Specifically, its response regarding the information at (a), (f) and (g), (i.e., records related to his benefits, banking details, pay and expenses) which Green Planet acknowledged is "employee personal information". Section 32(2) says that an organization must not charge an individual a fee respecting employee personal information concerning the individual. The March 11, 2019 letter acknowledges that no fee may be charged for the employee personal information, yet it also says the information will only be provided if the complainant pays the \$92,719.35 fee.

[55] Given that Green Planet did not identify any proper ground under PIPA for refusing access to the employee personal information at (a), (f) and (g), it should have been provided to the complainant along with the March 11, 2019 response. I find that responding in this contradictory and erroneous way is not responding "as accurately and completely as reasonably possible" in accordance with s. 28.

[56] From the information the parties provide, I gather Green Planet later recognized it could not charge for the employee personal information at (a), (f) and (g) and that information was provided to the complainant at no charge several months later. However, Green Planet's evidence shows it provided the employee personal information well beyond the permissible time periods in PIPA.<sup>31</sup> Specifically, Green Planet did not comply with the time limit set out in s. 31 of PIPA which states that an organization may extend the 30 days required to respond to a request by an additional 30 days, or with the commissioner's permission, for a longer period if certain conditions were met. There is no evidence of Green Planet following those time requirements with regards to producing the records containing the complainant's employee personal information at (a), (f) and (g).

[57] In summary, I find that Green Planet complied, for the most part, with its duty under s. 28 to respond as accurately and completely as reasonably possible. However, I find its response regarding the employee personal information responsive to parts (a),(f) and (g) of the access request did not comply with s. 28 for the reasons stated above.

---

<sup>31</sup> COO's affidavit.

## FEE ISSUE

[58] The last issue in this inquiry relates to the \$267.40 fee Green Planet assessed for the records responsive to part (e) of the access request, which are as follows:

- “annual corporate filings and related directors’ resolutions documents for the BC and Ontario registries for shareholding companies”;<sup>32</sup> and
- five years of cheques paid to the complainant in his capacity as a shareholder of several affiliated companies.

[59] Section 32(2) permits organizations to charge a “minimal” fee for providing an applicant access to their personal information that is not employee personal information. Section 36(2)(a) says that the commissioner may resolve a complaint that a fee required by an organization is not “reasonable”. Section 52(3)(c) provides the commissioner with authority to confirm, excuse or reduce a fee, in appropriate circumstances.

[60] Previous orders have explained that the appropriate approach in a fee dispute case is to first determine whether the fee is “minimal” in accordance with s. 32(2).<sup>33</sup> If it is not minimal, then I may reduce or excuse the fee to ensure compliance with s. 32(2). However, even if the fee is minimal, I still must consider under s. 36(2)(c) if imposing that fee on the complainant is reasonable given all circumstances.

[61] PIPA does not define the term “minimal” nor does it provide a fee schedule or guidance about what fees may be charged.<sup>34</sup> Previous PIPA orders that have considered the issue have said that a minimal fee is based on the actual, necessary costs that would be incurred to respond to the request.<sup>35</sup> A fee that generates revenue is not a minimal fee. Thus, a minimal fee is associated with the actual cost of locating, retrieving and producing a record, preparing a record for disclosure, and providing a copy of the record (including shipping and handling if the record is not sent electronically).<sup>36</sup>

[62] This is not to say, however, that a “minimal” fee will always cover all of the costs associated with responding to an access request.<sup>37</sup> While PIPA does not

---

<sup>32</sup> Green Planet’s March 11, 2019 response to the access request.

<sup>33</sup> Order P08-02, 2008 CanLII 30215 (BC IPC) at paras. 33-37.

<sup>34</sup> Unlike s. 75 of *Freedom of Information and Protection of Privacy Act* (FIPPA) which says how fees under FIPPA are to be calculated, and the *Freedom of Information and Protection of Privacy Regulation*, B.C. Reg. 323/93, which provides a schedule of “maximum” fees.

<sup>35</sup> Order P08-02, *supra* note 33 at paras.38-39; Order P08-03, 2008 CanLII 65712 (BC IPC); Order P08-04, 2008 CanLII 65713 (BC IPC); Order P10-03, *supra* at note 19.

<sup>36</sup> Order P08-02, *Ibid* at para. 39.

<sup>37</sup> Order P08-02 *Ibid* at para 39.

explicitly exclude charges for activities such as severing a record, the phrase “minimal fee for access” in s. 32(2) suggests that fees are limited to costs incurred in providing access, not costs for severing, which is an activity that denies access.<sup>38</sup> In the present case, however, there is no need to decide if time spent on severing is appropriately included in the \$267.40 fee because Green Planet provides no evidence that it is severing the records at issue here.

#### *Parties’ submissions*

[63] The parties’ inquiry submissions do not say anything specifically about the \$267.40 fee and whether it is minimal.<sup>39</sup> The only information that Green Planet provides about the \$267.40 fee is in its response to the access request when it explains how the amount was calculated. It says:

We will have to retrieve hard copies of these documents which will have to be copied and scanned. We estimate it will require [D], our payroll and accounting supervisor, 5 hours to retrieve these documents. We pay [D] \$52.88/hour and the documents will cost \$0.10/page to print. We estimate that these documents consist of approximately 30 pages in total. Therefore, the total cost to the company for producing these documents would be approximately \$267.40. We would ask that you pay a fee of \$267.40 for the production of these documents.

#### *Personal information*

[64] PIPA only grants an applicant the right to access their own personal information in accordance with s. 23. For the reasons that follow, I find that some of the records responsive to part (e) of the access request do not contain the complainant’s personal information, so PIPA provides him no right to access that information.

[65] Specifically, I find that the “annual corporate filings and related directors’ resolutions documents for the BC and Ontario registries for shareholding companies” are business information about companies. Normally, such records do not contain personal information, and there is no evidence in this case that they do. I am not satisfied, therefore, that the annual corporate filings and related directors’ resolutions contain the complainant’s personal information. For that reason, he has no right to access that information under s. 23 of PIPA. Green Planet is not required to provide copies of those records to the complainant under PIPA and the fee issue regarding them is moot.

[66] However, I find that copies of the shareholder cheques paid to the complainant contain the complainant’s personal information because they are

---

<sup>38</sup> This approach to PIPA is consistent with s. 75(2)(b) FIPPA which prohibits charging a fee for severing information from a record.

<sup>39</sup> They only address the \$92,451.95 assessed for access to the complainant’s personal emails.

about payments to him. There is nothing to indicate that a fee cannot be charged to access this information because it is “employee personal information” as defined by PIPA. Specifically, there is no evidence that this information is about the complainant’s employment or that it was collected, used or disclosed solely for the purposes reasonably required to establish, manage or terminate an employment relationship between the Green Planet and the complainant. For that reason, I find that it is the complainant’s personal information, and not employee personal information, so Green Planet is authorized under s. 32(2) to charge a minimal fee to access it.

#### *Minimal fee*

[67] I find that the \$0.10/page Green Planet is charging is a minimal amount to charge for photocopying, printing or scanning records. It is preferable for organizations to provide some explanation of what costs they actually incur in carrying out such activities and Green Planet has not done so.<sup>40</sup> However, by way of comparison, under FIPPA’s maximum fee schedule, \$0.10 is the most one can charge for scanning paper records and \$0.25 is the maximum for photocopying/printing.<sup>41</sup>

[68] Further, Green Planet’s evidence satisfies me that that \$52.88/hour is the actual labour cost for its payroll and accounting supervisor to do the work of retrieving the hard copies of the cheques, scanning or photocopying them and providing them to the complainant. There is no evidence that Green Planet has a lower paid employee who could do this task. The complainant does not suggest otherwise. While the hourly rate that Green Planet is charging is higher than what FIPPA allows public bodies to charge in its schedule of maximum fees (i.e., \$7.50 per 0.25 hour), I accept that \$52.88/hour is the actual cost to Green Planet and so, in that sense, it is a minimal rate.

[69] However, I do not find the amount of time Green Planet says would be needed to provide access to these records is objectively reasonable or supported by the evidence. For instance, I cannot understand why the payroll and accounting supervisor would need to both copy and scan the records, which is what Green Planet says would occur once the hard copies are retrieved. Either the records are photocopied and mailed/couriered or they are scanned and sent electronically. Green Planet does not explain why both photocopying and scanning are needed.

[70] Further, I do not accept it would take five hours of labour to retrieve, photocopy/scan and provide access to approximately 30 pages of records. This amounts to 10 minutes per page. Green Planet did not break down the five hours

---

<sup>40</sup> Order P08-02, *supra* note 33 at paras. 41-42.

<sup>41</sup> The schedule of maximum fees is in the *Freedom of Information and Protection of Privacy Regulation*, B.C. Reg. 323/93.

into the steps required nor did it explain why it would take so long. In the absence of this kind of detail, I find the total of five hours is much higher than one would reasonably expect for such a small number of pages. I conclude that Green Planet did not comply with s. 32(2) because charging for five hours of labour to provide access to the records that respond to part (e) of the complainant's access request is not charging a "minimal" fee.

[71] My conclusion that the \$267.40 fee in this case is not minimal, is supported by what previous PIPA orders have said about the amount of time necessary to provide access to records. For instance, in Order P08-02, the adjudicator found that 2.45 hours for an employment services organization to carry out the activities associated with providing access to 295 pages (i.e., 0.5 minutes per page) was appropriately minimal.<sup>42</sup>

[72] In Order P08-03, the adjudicator said that the 80 minutes a chiropractor estimated he needed to deal with a combined total of 17 pages (i.e., 4.7 minutes per page) "was generous to say the least."<sup>43</sup> In Order P08-04, the adjudicator said the same thing about the 80 minutes a physiotherapy clinic estimated it needed to provide access to 33 pages (i.e., 2.4 minutes per page).<sup>44</sup>

[73] In Order P10-03, the adjudicator found that 74 hours to provide access to 5455 pages (i.e., 1.2 minutes per page) was higher than he would expect and that charging for services not actually required to produce the records was inconsistent with a fee being minimal.<sup>45</sup>

[74] In my view, the fitting minimal amount to charge for providing access to copies of the complainant's shareholder cheques is one minute per page at the payroll and accounting supervisor's wage of \$52.88/hour. There will certainly be well under 30 pages once the corporate filings and directors' resolutions are removed from the equation. Further, the \$0.10 per page that Green Planet said it would charge for photocopying/scanning is the appropriate minimal amount in this case.

*Is it appropriate to reduce or excuse the fee?*

[75] Since I find the \$267.40 fee is not minimal, I conclude this is an appropriate circumstance to reduce the fee pursuant to s. 52(3)(c). I require Green Planet to provide the complainant with a reduced fee estimate, revised according to the guidelines provided in paragraph 74 immediately above. When the fee is revised and reduced as directed, it will be a minimal fee in compliance with s. 32(2).

---

<sup>42</sup> Order P08-02, *supra* note 33 at para. 40.

<sup>43</sup> Order P08-03, *supra* note 35 at para. 47.

<sup>44</sup> Order P08-04, *supra* note 35 at para. 34.

<sup>45</sup> Order P10-03, *supra* note 19 at paras 30-34.



*Is the fee reasonable?*

[76] In most situations, a minimal fee will also be a reasonable fee. However, that may not always be the case and it may be appropriate to further reduce or excuse a minimal fee. The factors to consider when deciding to reduce or excuse a minimal fee vary, but generally include the following:<sup>46</sup>

- If the applicant argues that they are genuinely unable to pay the fee, there must be evidence to support the assertion.
- It is appropriate to consider whether reducing or excusing the fee will cause a hardship to the organization. If an organization cannot afford the resources to provide the requested access, it should not be forced to expend them.
- An applicant may be required to demonstrate that they could not have obtained the documents by some other practical or reasonable means that do not impose costs on the organization.
- The applicant's purpose for seeking access to the records may also be relevant. Consideration should only be given to excusing a minimal fee if the applicant seeks the records in order to protect their real legal or financial interests or rights, for instance, or there is a clear public benefit to providing access.
- Before a minimal fee will be waived, the applicant should demonstrate that they have tailored their request to ensure that the organization is required to provide only those records which are necessary for the applicant's purposes.

[77] Once Green Planet provides the revised and reduced fee in this case, if there is any dispute about whether it should be further reduced or excused on the basis that it is not reasonable under s. 36(2)(c), the complainant should let me know. I will not resolve that issue unless the complainant requests it within the time frame set out below.

## **CONCLUSION**

[78] For the reasons given above, I make the following order under ss. 52(3) and 52(4) of PIPA:

---

<sup>46</sup> Order P08-02, *supra* note 33 at para. 52.

1. Subject to paragraph 2 below, I confirm that Green Planet complied, in part, with its duty under s. 28 to respond to the complainant's access request as accurately and completely as reasonably possible.
2. Green Planet did not comply with its duty under s. 28 when it responded in a contradictory and erroneous way regarding employee personal information in parts (a), (f) and (g) of the complainant's access request. No further order is needed because Green Planet has since provided access to that employee personal information at no charge.
3. Green Planet is required to revise and reduce the \$267.40 fee in compliance with the direction provided in paragraph 74 above and provide the revised fee estimate, with a breakdown demonstrating how the fee was calculated, to the complainant and me within 20 days of the date of this order, that is, on or before March 26, 2021.
4. The complainant will have 10 days from the date he receives the revised fee estimate, as PIPA defines "day", to request that I resolve any dispute about whether it is reasonable under s. 36(2)(c) and should be further reduced or excused.

February 26, 2021

**ORIGINAL SIGNED BY**

\_\_\_\_\_  
Elizabeth Barker, Director of Adjudication

OIPC File No.: P19-79953