



Order P21-07

BC GOVERNMENT AND SERVICE EMPLOYEES' UNION

Laylí Antinuk
Adjudicator

November 1, 2021

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Summary: The applicant requested information from the BC Government and Service Employees' Union (BCGEU) under PIPA. The BCGEU provided records in response, withholding a small amount of information under ss. 23(3)(a) (solicitor-client privilege) and 23(4)(c) (personal information about another individual). During the inquiry process, the BCGEU decided to release all the information it had previously withheld under s. 23(3)(a). The adjudicator confirmed the BCGEU's decision to withhold the remaining information in dispute.

Statutes Considered: *Personal Information Protection Act*, ss. 1 (definitions), 23(1)(a), and 23(4)(c).

INTRODUCTION

[1] Section 23(1)(a) of the *Personal Information Protection Act* (PIPA) gives an individual the right to access their personal information under the control of an organization, subject to certain exceptions.¹

[2] In this case, the applicant requested that the BC Government and Service Employees' Union (BCGEU) provide "any and all documents, emails, briefing notes, and correspondence from the BCGEU from [date range] in their duty to assist". Although the applicant's request does not explicitly say so, I presume she was seeking access to her own personal information under the control of the BCGEU. The BCGEU provided records in response, withholding a small amount of information under ss. 23(3)(a) (solicitor-client privilege) and 23(4)(c) (personal information about another individual).

¹ Sections 23(3) and 23(4) contain the exceptions to an individual's right to access their own personal information. Section 1 of PIPA defines the term "personal information".

[3] The applicant requested that the Office of the Information and Privacy Commissioner (OIPC) review the BCGEU's response. Mediation did not resolve the dispute between the parties and it proceeded to inquiry.

[4] After the parties received the Notice of Written Inquiry, the BCGEU decided to disclose all the information it had previously withheld under s. 23(3)(a). As a result, I find that the information previously withheld under s. 23(3)(a) is no longer in dispute, so I do not need to make a decision about it.²

ISSUE

[5] The issue in this inquiry is whether s. 23(4)(c) requires the BCGEU to withhold the information in dispute.

[6] The BCGEU bears the burden of proving that the applicant has no right to access the disputed information.³

Preliminary matter

[7] The applicant focusses much of her submission on matters that fall outside the scope of this inquiry. For instance, she discusses in detail her experience leading up to and during a hearing that occurred in December 2014, which she attended with BCGEU representatives and others. She also describes interactions she has had with her doctor. I have read the applicant's submissions carefully. I understand that she feels wronged by, and does not trust, the BCGEU. However, my role in this inquiry is confined solely to the consideration of the inquiry issue described above.

[8] To clarify further, I have no jurisdiction to consider the propriety of the actions and decisions of the BCGEU or any of its employees in relation to the December 2014 hearing, or any matter related to its interactions with, or representation of, the applicant.

[9] The applicant also included a wide variety of documents with her submission such as the BC Government Standards of Conduct, a copy of what she describes as an illegal BCGEU Medical Authorization Consent Form, and news releases from the BC Freedom of Information and Privacy Association. I do not understand the relevance of these documents to the inquiry issue and the applicant did not explain.

² I note that the BCGEU made submissions respecting the doctrine of mootness in relation to the s. 23(3)(a) issue. The applicant did not address or counter these arguments. The s. 23(3)(a) issue is moot. There is no live dispute between the parties respecting s. 23(3)(a). Additionally, I see no reason to exercise my discretion to decide the s. 23(3)(a) issue.

³ Section 51.

[10] Going forward, I will only discuss the parties' evidence and arguments to the extent necessary to explain my analysis and decision about the inquiry issue.

DISCUSSION

Background

[11] The applicant was a member of the BCGEU for a time.⁴ During that time, the BCGEU represented her in respect of certain issues she had with her employer.

Records and information in dispute

[12] The records comprise 199 pages of various documents, including emails, letters, faxes, forms, memos and handwritten notes. All the records relate to the applicant's employment and/or her interactions with the BCGEU.

[13] The only information in dispute in this inquiry consists of 11 words that appear on two pages of the responsive records. One of these pages is an email sent between two BCGEU employees (the email). The other page is a screenshot of a file browser from a BCGEU computer (the screenshot).

[14] As noted, the BCGEU withheld this information under s. 23(4)(c).

ACCESS RIGHTS UNDER PIPA

[15] Section 23 of PIPA gives an individual the right to access their own personal information under the control of organizations, subject to certain exceptions. The exceptions protect other interests by placing limits on an individual's right to access their own personal information.⁵

[16] The relevant parts of s. 23 state:

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:

...

⁴ The parties provided very little by way of background in their submissions. I gleaned this background information from my review of the responsive records and have been purposefully brief in order to protect the applicant's privacy.

⁵ Order P06-02, 2006 CanLII 32980 (BC IPC) at para. 11; Order P20-01, 2020 BCIPC 06 at para. 8.

(c) the disclosure would reveal personal information about another individual;

[17] The starting point when considering an organization's response to an access request made under s. 23(1)(a) is to first decide whether the withheld information qualifies as the applicant's personal information.⁶ This is because s. 23 of PIPA gives individuals a right to access *their own* personal information, but not the personal information of others.⁷ In other words, for information to be captured by s. 23(1)(a), it must be the access applicant's personal information.⁸

[18] PIPA defines personal information, in part, as information about an identifiable individual.⁹ Therefore, the threshold question I must first consider is whether the disputed information is about the applicant.

Is the disputed information the applicant's personal information?

[19] Eleven words are in dispute. The BCGEU did not provide submissions about any specific one of these words in isolation. Instead, the BCGEU submits that the disputed information comprises "the personal information of persons completely unconnected to the Applicant. The BCGEU would be in violation of multiple sections of PIPA (including sections 17, 18 and 23(4)(c) if it disclosed this personal information."¹⁰

[20] I have reviewed the 11 words at issue and have no hesitation in concluding that 10 of them are clearly either the first or last name of identifiable individuals other than the applicant.¹¹ I will begin by discussing the 10 names, then turn to the eleventh word.

[21] None of the names are the applicant's first or last name. Additionally, nothing in the evidence or submissions before me (including the records) even remotely suggests that any of the named individuals are associated in any way with the applicant or her employment issues or interactions with the BCGEU. Therefore, I accept the BCGEU's submission that the named individuals are "completely unconnected to the applicant". I conclude that the names of these individuals appear in the email and the screenshot because the BCGEU was representing or otherwise engaged with these individuals in respect of matters entirely unrelated to the applicant.

⁶ Order P20-01, 2020 BCIPC 06 at paras. 10-12; Order P20-06, 2020 BCIPC 50 at paras. 20-29.

⁷ Order P06-02, 2006 CanLII 32980 at para. 41; Order P19-01, 2019 BCIPC 3 at para. 11; Order P20-01, 2020 BCIPC 06 at para. 11.

⁸ Order P20-01, 2020 BCIPC 06 at para. 10.

⁹ Section 1 of PIPA contains its definitions.

¹⁰ BCGEU's initial submission at p. 3; and BCGEU's response submission at p. 3.

¹¹ I can tell the 10 words are names based on the 10 words themselves considered in the context of the surrounding words (which the BCGEU has already released to the applicant).

[22] For example, in the email, two other individuals' names appear alongside the applicant's name because the email author is listing three distinct, totally unrelated individuals that the email recipient interacted with that day.

[23] Similarly, the screenshot shows a list of 14 Microsoft Word documents. Most of the documents' titles contain the first or last name of the person those documents relate to. The list includes only five documents related to the applicant. The BCGEU already disclosed the entire title of each of these five documents to the applicant. With one exception discussed in paragraph 25 below, the only words the BCGEU withheld on the screenshot are the names of the individuals the other documents relate to.

[24] In short, 10 of the 11 words at issue are the names of other individuals entirely unrelated to the applicant. I find that the applicant has no right to access the ten names because they are not the applicant's personal information.

[25] I also find that the final (i.e. the eleventh) word is not the applicant's personal information. This word appears in the title of a Word document listed in the screenshot. Given the other words in the title of the document, I find that the document is a customer service policy for a certain demographic.¹² In my view, the withheld word is a generic descriptor of the particular demographic the customer service policy relates to. The generic descriptor is so broad that I am not satisfied that it is anyone's personal information, let alone the applicant's. I find that the applicant has no right to access this word because it is not her personal information.

[26] I have decided that the 11 words in dispute are not the applicant's personal information because they are not about her. Accordingly, she has no right to access the words under s. 23(1)(a) and the BCGEU can withhold them for that reason.¹³

[27] Given my findings respecting the information in dispute, I will not discuss s. 23(4)(c) because it is not necessary to do so.

¹² The title of the document is: "[redacted word] cust serv policy gr.doc".

¹³ For a similar finding, see Order P20-06, 2020 BCIPC 50 at para. 25.

CONCLUSION

[28] For the reasons given above, under s. 52 of PIPA, I confirm the BCGEU's decision to withhold the information in dispute.

November 1, 2021

ORIGINAL SIGNED BY

Laylí Antinuk, Adjudicator

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