



Order P22-04

RICHMOND CITY BASEBALL ASSOCIATION

Erika Syrotuck
Adjudicator

August 11, 2022

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Summary: An applicant made a request for personal information under the *Personal Information Protection Act* (PIPA) to the Richmond City Baseball Association (Association). The Association identified some records containing the applicant's personal information but refused to disclose it under s. 23(4) of PIPA. The adjudicator found that some of the information was the applicant's personal information and that s. 23(4) applied to some but not all of it.

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

INTRODUCTION

[1] An applicant requested his own personal information and his son's personal information from the Richmond City Baseball Association (Association) under the *Personal Information Protection Act* (PIPA).

[2] In response to the applicant's request, the Association refused to provide the personal information on the basis that the applicant had already been provided with some of his own information.

[3] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the Association's decision.

[4] During mediation, the Association said it was refusing to disclose the information based on s. 23(4) of PIPA.

[5] Mediation did not resolve the issues and the matter proceeded to inquiry.

Preliminary Issue – who may act for a minor

[6] The access request clearly indicates that the applicant is seeking his son's personal information. This requires me to decide whether the applicant can act for his son in accordance with s. 2(2) of the *Personal Information Protection Act Regulations* (Regulation), set out below. However, this issue was not identified prior to the start of the inquiry. I added it as an issue and the schedule for submissions was extended so that the parties could address it.

[7] Section 2(2)(a) of the Regulation specifies who can act for a minor. This section says:

(2) Subject to subsection (3), the guardian of a minor may

(a) exercise the rights of the minor under section 23 of the Act, if the minor is incapable of exercising the minor's rights under that section,

[8] Therefore, the applicant is only able to exercise his son's access rights under s. 23 of PIPA if all of the following three conditions are met:

1. The applicant is the son's guardian,
2. The son is a minor; and
3. The son is incapable of exercising his own access rights.

[9] The applicant confirmed that his son was not incapable of exercising his own access rights. As a result, I find that the applicant is not able to exercise his son's access rights.

[10] The applicant asked that I amend the inquiry to include his son, or in the alternative that I adjudicate the request for his personal information alone.¹ The applicant says that the request has been for information interwoven between himself and his son from the outset, but was joined for efficiency. He says that his son has been involved and consulted throughout the entire process.

[11] For the reasons that follow, I have decided to adjudicate the applicant's request for his personal information alone. As I set out below, s. 23(4) of PIPA only allows an individual to access their own personal information. There is no mechanism to access personal information about more than one individual even with the consent of those individuals. Therefore, there is no efficiency to be gained in this sense as I would need to adjudicate the requests for the applicant's and his son's personal information separately. Balanced with the administrative

¹ Applicant's June 2, 2022 response submissions.

burden of adding another applicant, I have decided not to add the son to this inquiry. The son can still make a request for his own personal information to the Association.

ISSUE

[12] The issue to be decided in this inquiry is whether the Association must not disclose the information in dispute under s. 23(4).

[13] Under s. 51(a), it is up to the Association to show that the applicant has no right of access to his personal information.

DISCUSSION

Records

[14] The records in dispute are three email chains and one set of meeting minutes. The email chains have been withheld in their entirety. The meeting minutes have been partially disclosed.²

[15] The records concern issues arising on a youth baseball team.

Section 23(4) – access to personal information

[16] Section 23(1)(a) gives individuals the right to access their own personal information that is under the control of the organization, subject to some exceptions set out in s. 23(3) and s. 23(4). In this case, the Association is refusing to disclose the personal information under s. 23(4).

[17] I will first decide if the information is the applicant's personal information, before determining if an exception applies.

Is the information the applicant's personal information?

[18] As PIPA only provides a right of access to one's own personal information, the first step is to determine whether the information is the applicant's personal information.

[19] Under s. 1 of PIPA, "personal information" means information about an identifiable individual and includes employee personal information but does not include "contact information" or "work product information". These terms are also defined in s. 1 as follows:

² The applicant said that he already has a copy of the meeting minutes from another proceeding. However, there is no provision in PIPA that allows information to be disclosed based on prior knowledge, so I find that this record is still in dispute.

"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.

[20] Some of the information is clearly identifiable information about the applicant because it mentions the applicant by name. This information is not "contact information". It is also not "work product information" in this context, because it was not prepared or collected by the applicant.

[21] The remainder of the records provided by the Association contain information that is not personal information about the applicant. The applicant has no right of access to this information.

Is the Association required to withhold the applicant's personal information under s. 23(4)?

[22] Section 23(4) sets out circumstances where an organization is required to withhold an applicant's personal information. It says:

(4) An organization must not disclose personal information and other information under subsection (1) or (2) in the following circumstances:

(a) the disclosure could reasonably be expected to threaten the safety or physical or mental health of an individual other than the individual who made the request;

(b) the disclosure can reasonably be expected to cause immediate or grave harm to the safety or to the physical or mental health of the individual who made the request;

(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.

[23] The Association cited ss. 23(4)(a) and (d) as the basis for not providing the applicant's personal information to him. However, this section is mandatory; an organization must refuse to disclose an applicant's personal information if any

of the circumstances apply. Therefore, I will consider whether any of the four circumstances apply.

Section 23(4)(c) – information about another individual

[24] First, I will consider whether the applicant's personal information would reveal personal information about another individual under s. 23(4)(c).

[25] As mentioned above, PIPA defines "personal information" as information about an identifiable individual and includes employee personal information but does not include "contact information" or "work product information".

[26] Some of the applicant's personal information is what other identifiable people said about the applicant. Therefore, it is simultaneously about the applicant and about other identifiable individuals. This information is not "contact information" because it is not information to enable a person at a place of business to be contacted. It is not "work product information" because it is not about an individual who prepared or collected the information; in this case it is about the applicant, and the applicant did not prepare or collect the information. I find that the information about other individuals is their "personal information" as defined in PIPA. As a result, I find that s. 23(4)(c) prohibits disclosure of this information.

[27] However, a small amount of the applicant's personal information is not intertwined with information about other individuals so it is his personal information exclusively. I will consider whether any of the other exceptions under s. 23(4) apply to this information.

Section 23(4)(a) – safety or mental or physical health

[28] Section 23(4)(a) requires an organization to refuse to disclose an applicant's personal information where the disclosure could reasonably be expected to threaten the safety or physical or mental health of an individual other than the individual who made the request.

[29] It is well established that the phrase "could reasonably be expected to" means that the standard of proof is a reasonable expectation of probable harm. This means that a public body must show that the likelihood of the harm occurring is "well beyond" or "considerably above" a mere possibility.³ The amount and quality of the evidence required to meet this standard depends on

³ *Ontario (Community Safety and Correctional Services) v Ontario (Information and Privacy Commissioner)* 2014 SCC 31 at para. 54 citing *Merck Frosst v Canada (Health)* 2012 SCC 3 at paras. 197 and 199.

the nature of the issue and the “inherent probabilities or improbabilities or the seriousness of the allegations or consequences.”⁴

[30] As noted above, the Association cited s. 23(4)(a) as a basis for withholding the information. It provided a timeline of events related to what it says was an “issue with a player speaking and acting in an inappropriate manner.”⁵

[31] The applicant disputes that the disclosure could reasonably be expected to threaten other individuals. More specifically, the applicant says that, while the “season was unpleasant due to the dynamics of the team”, there have been no physical or verbal threats made to any player or parent, either during or after the season.⁶ In support of his position, the applicant provided some email correspondence.

[32] I am not satisfied that disclosure of the applicant’s personal information in this case could threaten another individual’s physical or mental health. Nothing in the timeline that the Association provided indicates to me that this specific information could reasonably be expected to do so. I find that s. 23(4)(a) does not apply.

Section 23(4)(d) – disclosure would reveal the identity of an individual who did not consent

[33] The Association also relied on s. 23(4)(d), which requires an organization to refuse to disclose information where 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.

[34] None of the information that I found is only the applicant’s personal information would reveal the identity of an individual who provided personal information about another person and who did not consent to the disclosure of their identity.

Section 23(4)(b) – safety or mental or physical health

[35] Section 23(4)(b) requires an organization to refuse to disclose an applicant’s personal information if the disclosure can reasonably be expected to cause immediate or grave harm to the safety or to the physical or mental health of the individual who made the request.

⁴ *Ibid* citing *FH v McDougall*, 2008 SCC 53 at para. 40.

⁵ The Association’s initial submissions.

⁶ Applicant’s May 13, 2022 response submissions.

[36] This section has not been raised by the organization and nothing in the records at issue indicate to me that disclosure of the information that is only the applicant's personal information could reasonably be expected to harm the applicant's physical or mental health.

Conclusion on s. 23(4)

[37] I find that none of the circumstances in s. 23(4) apply to the information that is exclusively the applicant's personal information. I have highlighted this information in a copy of the records that will be given to the Association along with this order.

Can the information be severed?

[38] If the applicant's personal information can be severed, s. 23(5) requires that the organization do so as follows:

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.

[39] I have considered whether the information can be severed without revealing the information that the Association is required not to disclose to the applicant under s. 23(4).

[40] For example, I have considered whether opinions about the applicant in the emails can be disclosed to the applicant with the opinion-giver's name removed. Given the nature of the opinions, the number of opinion-givers involved and what I can discern about the circumstances, I find that removing the opinion-givers' names would still allow the applicant to identify them. Therefore, I find that disclosing the opinions, but not the names would still disclose information that the Association is required to withhold under s. 23(4)(c).

[41] In addition, I find that it is not possible to sever the factual statements about the applicant which appear in the meeting minutes. Every statement in the meeting minutes is attributed to an individual. I find that even if names or other information is severed from these statements, the applicant will still be able to identify these individuals. The reason for this is that the applicant was at the meeting⁷ and, therefore, knows who attended and everything that was said. Therefore, I find that it is not possible to sever names or other information in a manner that does not disclose the identities of the other individuals.

⁷ According to the header on the meeting minutes, which have been disclosed.

[42] However, I find severing is possible for some information about the applicant that appears in the emails. For example, I have determined that the name of a person who made a statement relating to the applicant can be severed and their statement disclosed without revealing their identity. I have highlighted the information that can be disclosed in the copy of the records that will go to the Association.

CONCLUSION

[43] For the reasons given above, I make the following order under s. 52 of PIPA:

1. Subject to item 2 below, I require the Association to refuse the applicant access, in part, to his personal information.
2. I require the Association to give the applicant access to the highlighted information in the copy of the records given to the Association along with this order.
3. The Association must provide proof to the OIPC registrar of inquiries that it has complied with this order, along with a copy of the records.

[44] Under s. 53(1) of PIPA, the Association is required to comply with the above orders by **September 23, 2022**.

August 11, 2022

ORIGINAL SIGNED BY

Erika Syrotuck, Adjudicator

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