



Order P23-02

FIRESTONE & TYHURST LAW

Erika Syrotuck
Adjudicator

March 28, 2023

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Summary: An individual complained that Firestone & Tyhurst Law (the Organization) contravened the *Personal Information Protection Act* (PIPA) when it collected, used, and disclosed her personal information. The adjudicator found that PIPA permitted the Organization to collect, use, and disclose the complainant's personal information without her consent for the purpose of providing legal services to a third party.

Statutes Considered: *Personal Information Protection Act*, SBC c 63 ss. 6, 11, 12(1)(k), 14, 15(1)(h.1), 17, 18(1)(o) and (4).

INTRODUCTION

[1] This inquiry is about a complaint that Firestone & Tyhurst Law (the Organization) contravened the *Personal Information Protection Act* (PIPA) when it collected, used and disclosed the complainant's personal information without her consent.

[2] In response to the complaint, the Organization said, among other things, that it had done nothing wrong. The complainant then asked the Office of the Information and Privacy Commissioner (OIPC) to investigate.

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

ISSUES

[4] At this inquiry, I must decide whether ss. 12(1), 15(1) and 18(1) of PIPA permitted the Organization to collect, use, and disclose the complainant's personal information without consent.

DISCUSSION

Background and description of complaint

[5] The Organization is a law firm. The complainant was involved in a legal dispute with a client of the Organization (Client). A lawyer from the Organization (Lawyer) represented the Client. Both the Organization and the complainant indicate that the legal dispute was contentious.

[6] During the course of the legal dispute, the Lawyer sent a letter by fax to the complainant's lawyer (Letter).¹ The Letter indicated that the Client had been provided with documentation relating to the complainant's health (Document) and also included some commentary from the Lawyer about the content of the Document. The Document was attached to the Letter.

[7] The complaint says the Organization contravened PIPA when it collected, used, and disclosed the information about her in the Document and the Letter without her consent.

Scheme of the Act

[8] Under ss. 6(1)(a), (b) and (c) and (2) of PIPA, an organization must not collect, use, or disclose personal information about an individual unless:

- (a) the individual gives consent;
- (b) PIPA authorizes the organization to collect the personal information without the individual's consent; or
- (c) the individual is deemed to have given consent under PIPA.

[9] Only collection, use and disclosure without consent (as contemplated by s. 6(2)(b)) are at issue in this inquiry. Neither the complainant nor the Organization asserted that the complainant consented under ss. 6(2)(a) or (c).

[10] In addition, ss. 11, 14 and 17 place limits on an organization's collection, use and disclosure of personal information. The effect of these provisions is that the purpose for the collection, use or disclosure must be one which a reasonable person would consider appropriate in the circumstances, even if PIPA otherwise permits the collection, use or disclosure.

[11] I will start with whether the information is the complainant's personal information before turning to whether PIPA authorized the Organization to collect,

¹ The complainant provided a full copy of the Letter and the Document. The Organization only provided a partial copy of the Letter.

use, and disclose the information at issue without consent. Finally, if needed, I will decide whether the Organization complied with ss. 11, 14 and 17.

Is the information at issue the complainant's personal information?

[12] The first step is to decide whether the information that is the subject of the complaint is “personal information.” Section 1 of PIPA defines personal information in the following way:

"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;

[13] Section 1 also defines “contact information” and “work product information”:

"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.

[14] It is clear to me that both the Organization and the complainant believe that the Document and the Letter contain the complainant's personal information. I agree and have no trouble concluding that the information at issue in this inquiry is the complainant's personal information. It is clearly about her and is not her “contact information” or “work product information.”

[15] I turn now to whether PIPA authorized the organization to collect, use, or disclose the complainant's personal information.

Did PIPA authorize the organization to collect the complainant's personal information without consent?

[16] Section 12(1) of PIPA sets out circumstances in which organizations are authorized to collect personal information about an individual without consent or from a source other than an individual.

[17] Section 12(1)(k) is relevant in this case. This section says that an organization may collect personal information about an individual without consent or from a source other than the individual if the personal information is collected

for the purposes of the organization providing legal services to a third party and the collection is necessary for the purposes of providing those services.²

[18] Past orders have said that “necessary” means more than ‘convenient’ but does not mean ‘indispensable’.³

[19] The Organization says that it received the Document from the Client in the ordinary course of conducting the file. It says that it was the Organization’s duty to obtain all relevant documents from the Client which it did.

[20] The complainant says that the collection was not necessary for the purpose of providing legal services to the Client because it was created for an entirely different purpose.

[21] The complainant also describes how the Client likely obtained the Document, but I find that this is not relevant to the issue I must decide.⁴

[22] For the reasons that follow, I am satisfied that s. 12(1)(k) authorized the Organization to collect the complainant’s personal information in the Document from the Client.

[23] First, I am satisfied that the Organization collected the personal information in the Document for the purpose of providing legal services to the Client. There is no dispute that the Lawyer provided legal services to the Client or that the Client provided the Document to the Lawyer in the context of that relationship.

[24] Further, I am satisfied that it was necessary for the Organization to collect the Document for the purpose of providing the legal services. I accept that the Lawyer collected the Document to determine whether it was relevant to the Client’s legal issue and, if it was, to use the information in it to advance the Client’s interests. I acknowledge that it may have been possible for the Lawyer to provide legal services without collecting the particular personal information in the Document. However, I accept that the Lawyer needed to collect *potentially* relevant information from the Client in order to determine whether the information was actually relevant. For this reason, I find that the collection was “necessary” within the meaning of s. 12(1)(k).

[25] I am satisfied that s. 12(1)(k) applies.

² Section 12(1)(k) was not specifically listed in the Notice of Inquiry or the Fact Report and neither party specifically commented on it. As such, I wrote to the parties during the inquiry to advise them of the specific provisions that I thought may be relevant in the inquiry and give them an opportunity to comment on each of them. Both parties provided additional submissions.

³ Order P09-01, 2009 CanLII 38705 at paras 34 and 40. See also Order P17-01, 2017 BCIPC 5 at paras 16-22 and 26.

⁴ The complainant also provided extensive submissions relating to the legal dispute between her and the Client. I have reviewed all of the complainant’s submissions and evidence but have only referred to the information that is relevant to the matters in this inquiry.

Did PIPA authorize the organization to use the complainant’s personal information without consent?

[26] Section 15(1) sets out the circumstances where an organization can use personal information without that individual’s consent.

[27] Under s. 15(1)(h.1), an organization is authorized to use personal information if it was collected by the organization under section 12(1)(k) or (l) and is used to fulfill the purposes for which it was collected.

[28] Above, I found that the Organization collected the personal information in the Document under s. 12(1)(k). As a result, the only remaining question with regards to s. 15(1)(h.1) is whether that personal information was used to fulfill the purposes for which it was collected.

[29] The Organization says that the personal information in the Document was not used in any way, other than to provide the complainant’s lawyer with notice that it had the Document in its possession. It also says that the Document “did not become an issue” during the course of the legal matter.⁵

[30] The complainant says that the Lawyer did not do due diligence regarding the use (and disclosure) of the personal information in the Document. She says that the Lawyer relied solely on the misrepresented and false information that the Client provided. She says that, as a result, the Lawyer perpetuated a false narrative about her. In particular, the complainant says that the Lawyer used the personal information in the Document to draw conclusions about her personal lived experience in a way that was beyond the Lawyer’s professional capacity. She says that it was used to defame her and deny her civil and human rights.

[31] Based on the parties’ submissions and evidence, I find that the Lawyer used the complainant’s personal information in the Document for the purpose of providing legal services to the Client. More specifically, the Lawyer used the complainant’s personal information to determine whether it was relevant to the Client’s legal issue. The Lawyer also used the complainant’s personal information to write the Letter to the complainant’s lawyer in the context of the legal dispute. These are all functions that relate to providing legal services. As a result, I am satisfied that the Organization used the personal information in the Document for the purpose for which it was collected.

[32] I acknowledge that the complainant objects to the way that the Lawyer used her personal information. For example, the complainant submits that the Lawyer drew conclusions about her that were inappropriate. However, I have found that the complainant’s personal information was used to provide legal services, which is the purpose for which it was collected. This alone is sufficient to meet the requirements of s. 15(1)(h.1). I make no judgment on whether the

⁵ Organization’s additional submissions, dated December 9, 2022.

conclusions that the Lawyer drew about the complainant were fair or accurate because that is not relevant to the issue I must decide.

[33] I find that s. 15(1)(h.1) applies to the Organization's use of the personal information in the Document.

Did PIPA authorize the Organization to disclose the personal information without consent?

[34] Section 18 sets out the circumstances where an organization is permitted to disclose personal information without consent. Sections 18(1)(o) and (4) are relevant in this inquiry:

18(1) An organization may only disclose personal information about an individual without the consent of the individual, if

(o) the disclosure is required or authorized by law,

(4) An organization may disclose personal information to another organization, or to a public body, without consent of the individual to whom the information relates, if

(a) the personal information was collected by an organization under section 12 (1) (k) or (l),

(b) the disclosure between the organizations, or between the organization and the public body, is for the purposes for which the information was collected,

(c) the disclosure is necessary for those purposes, and

(d) for each disclosure under this subsection, the third party referred to in section 12 (1) (k) or (l), as applicable, consents to the disclosure.

Section 18(4) – disclosure of information collected under s. 12(1)(k) or (l)

[35] The Organization says that the Lawyer sent the Letter and the Document to the complainant's lawyer for the purpose of facilitating a discussion between the two parties. The Organization says that the Document was only shared with the complainant's lawyer for the purpose of giving notice that the Organization had it.

[36] The Organization also says that it sent the Letter and the Document on the instruction of the Client.

[37] As I explained above, the complainant says that the Lawyer did not do due diligence before disclosing her sensitive and very personal information to her lawyer. The complainant also says that she also did not have an opportunity to

provide additional information that would give further context to the matters addressed in the Document. The complainant also says that s. 18(4)(d) should require her consent, not the Client's.

[38] For the reasons that follow, I am satisfied that all the requirements of s. 18(4) are met.

[39] First, the opening words of s. 18(4) indicate that this provision allows disclosure only to another organization or to a public body. I find that the Lawyer disclosed the complainant's personal information to another organization when she sent the Letter (with the Document attached) to the complainant's lawyer. This is because the complainant's lawyer's law practice is an organization under PIPA.⁶

[40] Next, I find that s. 18(4)(a) is met because the Organization collected the personal information in the Document under s. 12(1)(k). This is the same personal information that the Lawyer used to write the Letter, so in my view, s. 18(4)(a) applies equally to the content of the Letter.

[41] Turning to s. 18(4)(b), I am satisfied that the purpose for the disclosure was to provide legal services to the Client. I accept that the Lawyer wrote the Letter to communicate with the complainant's lawyer about the parties' legal dispute and sent it, with the Document attached, to the complainant's lawyer for this purpose. Therefore, I find the disclosure was for the purpose for which the information was collected.

[42] I am also satisfied that the disclosure was necessary for the Lawyer to provide legal services to the Client. Disclosing the complainant's personal information to her lawyer was not merely convenient. Rather, it was an integral part of the Lawyer's job to communicate with the complainant's lawyer about the parties' legal dispute. As a result, I find s. 18(4)(c) is met.

[43] Section 18(4)(d) requires the consent of the third party referred to in ss. 12(1)(k) or (l) to disclose the personal information. The third party in this case is the Client. Section 18 is about disclosure without consent of the individual, who in this case is the complainant, so it follows that s. 18(4)(d) does not require her consent.

[44] I accept that the Client consented to the disclosure based on the Organization's uncontradicted statement that the Client instructed the Lawyer to disclose the personal information to the complainant's lawyer.

⁶ I do not know whether the complainant's lawyer was acting as a sole proprietor, in a partnership or as an employee of a law firm. In any of these scenarios, the entity receiving information qualifies as an "organization" under PIPA.

[45] As a result, I find that s. 18(4) permitted the Organization to disclose the complainant's personal information. I do not need to consider whether s. 18(1)(o) also applies.

[46] I turn next to whether the Organization's collection, use and disclosure complied with ss. 11, 14 and 17 of PIPA.

Was the Organization's collection, use and disclosure for purposes that a reasonable person would consider to be appropriate in the circumstances?

[47] Under ss. 11, 14 and 17 of PIPA, an organization may collect, use, and disclose personal information only for purposes that a reasonable person would consider appropriate in the circumstances.

[48] Section 11 says:

11 Subject to this Act, an organization may collect personal information only for purposes that a reasonable person would consider appropriate in the circumstances and that

(a) fulfill the purposes that the organization discloses under section 10 (1),
or

(b) are otherwise permitted under this Act.

[49] Section 14 says:

14 Subject to this Act, an organization may use personal information only for purposes that a reasonable person would consider appropriate in the circumstances and that

(a) fulfill the purposes that the organization discloses under section 10 (1),

(b) for information collected before this Act comes into force, fulfill the purposes for which it was collected, or

(c) are otherwise permitted under this Act.

[50] Section 17 is the same as s. 14 but with respect to disclosure rather than use.

[51] These sections each have two parts and the requirements of both must be met in order for an organization to comply. First, the opening words require that the collection, use, and disclosure are for purposes that a reasonable person would consider appropriate in the circumstances. Second, one of the circumstances in each enumerated list must be met.

[52] The opening words are about whether the purposes for the collection, use and disclosure are reasonable, not whether the collection, use or disclosure itself was reasonable *for* those purposes.

[53] I am satisfied that the Organization collected, used and disclosed the complainant's personal information for the purpose of providing legal services to the Client. In my view, it was reasonable for the Lawyer to collect the complainant's personal information from the Client to determine if it was relevant to the legal dispute between the complainant and the Client. It was also reasonable for the Organization to disclose it to the complainant's lawyer for the purpose of communicating about the legal dispute. These actions all furthered the Organization's ability to adequately provide legal services to the Client. For these reasons, I find that a reasonable person would consider the Organizations' purposes for the collection, use and disclosure to be appropriate in the circumstances.

[54] Turning to the second part, I find that the collection, use and disclosure were "otherwise permitted" under PIPA because ss. 12(1)(k), 15(1)(h.1), and 18(4) authorized the Organization to collect, use, and disclose the complainant's personal information without her consent.

[55] As a result, I find that the Organization complied with ss. 11(b), 14(c) and 17(c) when it collected, used and disclosed the complainant's personal information.

Conclusion – s. 6

[56] I find that the Organization complied with ss. 6(1)(a), (b) and (c) and s. 6(2)(b) when it collected, used, and disclosed the complainant's personal information without her consent for the purpose of providing legal services to the Client.

CONCLUSION

[57] For the reasons above, under s. 52(3)(e) of PIPA, I confirm the Organization's decision to collect, use, and disclose the complainant's personal information.

March 28, 2023

ORIGINAL SIGNED BY

Erika Syrotuck, Adjudicator

OIPC File No.: P19-82537