



Order P23-04

WEYERHAEUSER COMPANY LIMITED

Erika Syrotuck
Adjudicator

May 11, 2023

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Summary: An individual complained that her employer violated the *Personal Information Protection Act* (PIPA) when it kept a copy of her applications for short-term disability benefits and subsequently submitted them as evidence in a hearing before the Workers' Compensation Appeal Tribunal (WCAT). The adjudicator found that the complainant did not give consent for the employer to keep a copy of the short-term disability applications and that PIPA did not authorize the employer to collect the applications without consent. However, the adjudicator found that the complainant was deemed to have consented to the collection of her personal information only for the purpose of sending the short-term disability applications to the benefits provider. The adjudicator found that the employer did not retain the complainant's personal information in compliance with PIPA.

Statutes Considered: *Personal Information Protection Act* SBC c 63 ss. 1, 6(1), 6(2), 7(1), 8(1), 10(1), 11, 12(1)(c), 13, and 35(2).

INTRODUCTION

[1] A former employee of Weyerhaeuser Company Limited (Weyerhaeuser) complained that Weyerhaeuser collected, used and disclosed her personal information in violation of the *Personal Information Protection Act* (PIPA) when it kept a copy of her applications for short-term disability benefits and subsequently submitted them as evidence in a hearing before the Workers' Compensation Appeal Tribunal.

[2] In response to the complaint, Weyerhaeuser said that it was authorized to collect, use and disclose the information at issue. The complainant was unsatisfied with this response and asked the Office of the Information and

Privacy Commissioner (OIPC) to investigate. Mediation did not resolve the issues and the matter proceeded to inquiry.¹

[3] At the inquiry, I decided that the complainant's initial complaint to the OIPC fairly raised the issue of whether Weyerhaeuser retained her personal information in compliance with s. 35(2) of PIPA. I added this issue to the inquiry and gave the parties an opportunity to make further submissions.

ISSUES

[4] At this inquiry, I must decide whether Weyerhaeuser collected, retained, used and disclosed the complainant's personal information in compliance with PIPA.

DISCUSSION

Background

[5] At the relevant time, the complainant was an employee of Weyerhaeuser. The complainant applied for short-term disability benefits several times throughout her employment, starting in 2003.² Each time, she filled out the benefit provider's claim form. I will refer to the blank claim form as the "Form" and to completed Forms as "Applications".

[6] The Form includes the following three parts: an employee statement, employer statement and a physician statement.

[7] The benefits provider provides the following instructions on completing the Form:

You must complete the "Employee's Statement". If you wish, you can complete it online, then print the form and sign it, or your employer or local union can supply the blank form. Your employer must complete the "Employer's Statement" and your doctor must complete the "Attending Physician's Statement". ALL NINE PAGES of the completed claim form should be sent to:

[benefit provider's address]

Alternatively, you may return the claim form to your employer who will send it to the Administrator [of the benefits provider] on your behalf.

¹ I note that the complainant is represented by her union in this inquiry.

² The exact number of times is not clear to me. At paragraph 13 of her affidavit, the Clerk deposes that that the complainant applied eight times. The complainant mentions that Weyerhaeuser introduced "approximately nine" sets of Applications in the WCAT hearing; initial submissions para 9.

[8] Although the parties contest the surrounding circumstances, they agree that the complainant asked Weyerhaeuser to send her Applications to the benefits provider and that Weyerhaeuser did so. Weyerhaeuser acknowledges that it also kept a copy of the complainant's Applications. As I detail below, the collection at issue in this inquiry is whether PIPA authorized Weyerhaeuser to keep a copy of the complainant's Applications.

[9] Some time later, the complainant claimed workers' compensation. The claim was denied and the complainant appealed. Both the complainant and Weyerhaeuser attended the hearing of the appeal before the Workers' Compensation Appeal Tribunal (WCAT). Weyerhaeuser submitted the complainant's Applications as evidence in that hearing. The complainant says that Weyerhaeuser violated PIPA when it used and disclosed her personal information on the Applications in the WCAT hearing.

[10] I note that both parties provided a copy of the Form in this inquiry. Neither provided a copy of any of the complainant's Applications; however, the complainant provides some specific details about the information she provided on the Applications in her submissions.³ I am satisfied that taken together, the Form and the details as provided by the complainant are sufficient to decide the issues in the inquiry.

Is the information the complainant's personal information?

[11] Since this complaint is about whether PIPA authorized Weyerhaeuser to collect, use and disclose personal information, the first step is to decide whether the information in the Applications is the complainant's "personal information".⁴ 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;

[12] 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,

³ Complainant's initial submissions at paras 12 and 14; complainant's sworn statement at paras 10 – 13.

⁴ Whether Weyerhaeuser collected, used or disclosed the information is not in dispute. It is clear that the parties agree it did.

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.

[13] The complainant says that her Applications contain her private medical information and that this is clearly "personal information" as defined in PIPA.

[14] Weyerhaeuser agrees that an individual's medical information contained in an Application is their personal information.

[15] I have no trouble concluding that the information that the complainant provided in her Applications is "personal information" within the meaning of PIPA. It is clearly identifiable information about the complainant and is not "contact information" or "work product information" as defined above.

Did PIPA authorize Weyerhaeuser to collect the personal information?

[16] Section 6(1)(a) of PIPA says an organization must not collect personal information. However, under s. 6(2), s. 6(1)(a) does not apply if:

- (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.

[17] In addition, s. 11 places limits on collection, as follows:

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.

[18] The effect of s. 11 is that, even if an individual consents or is deemed to have consented to the collection or the organization is permitted to collect the personal information without consent, the purpose for the collection must still be one which a reasonable person considers appropriate in the circumstances.

[19] The collection at issue in this inquiry is the collection that occurred when Weyerhaeuser kept a copy of the complainant's Applications. To be even more precise, the complaint is about the fact that Weyerhaeuser collected the complainant's personal information on the employee and physician statements as part of her Applications. The employer portion is not at issue.⁵

[20] The parties made submissions about whether the complainant consented, was deemed to have consented or whether PIPA authorized Weyerhaeuser to collect the personal information without consent. I will decide each in turn. Then, if necessary, I will decide if the collection was in accordance with s. 11.

Did the complainant consent to the collection of her personal information?

[21] I will first decide if the complainant gave consent under s. 6(2)(a). Section 7(1) is relevant to s. 6(2)(a) because it specifies how consent is to be given. In particular, s. 7(1) requires that notice be provided in accordance with s. 10(1). Those sections say:

7(1) An individual has not given consent under this Act to an organization unless

- (a) the organization has provided the individual with the information required under section 10 (1), and
- (b) the individual's consent is provided in accordance with this Act.

10(1) On or before collecting personal information about an individual from the individual, an organization must disclose to the individual verbally or in writing

- (a) the purposes for the collection of the information, and
- (b) on request by the individual, the position name or title and the contact information for an officer or employee of the organization who is able to answer the individual's questions about the collection.

[22] With regards to s. 10(1)(a), the purpose should be stated as precisely as possible so that the needs of the organization can be carefully balanced against the rights of the individual.⁶

Weyerhaeuser's submissions

[23] Weyerhaeuser submits that the complainant consented to the collection of the Applications for the purpose of managing her ongoing disability issues.

⁵ The employer portion was filled out by Weyerhaeuser and is not a collection.

⁶ Order P11-02, 2011 BCIPC 6 (CanLII) at para 71.

[24] By way of background, Weyerhaeuser says that it recognizes that its employees may be unfamiliar with or can be overwhelmed by the process of applying for short-term disability benefits. As such, Weyerhaeuser makes its Unit Accounting Clerk (Clerk) available to assist employees with filling out the Form and submitting it to the benefits provider. Weyerhaeuser provided affidavit evidence from the Clerk in this inquiry.

[25] The Clerk says that when an employee first indicates that they require short-term disability benefits, she provides them with the Form. Then, she explains to employees how to fill out the employee and physician statements. She also explains that the employee can either submit those portions on their own or return them to her, in which case the Clerk will submit it to the benefits provider on their behalf.

[26] The Clerk says that some employees choose to complete and submit the employee and physician statements on their own. If this is the case, the Clerk says she requests that the employee notify her when they have completed those portions. The Clerk then submits the completed employer portion of the Application to the benefits provider.

[27] However, the Clerk says that in many instances, employees request that she compile the Application for them and go through it with them line-by-line to ensure that it has been filled out properly. The Clerk explains that, on occasion, an employee will ask her to fill out the employee section with them or to review the physician portion. She says that her review of the physician portion is generally limited to ensuring that both the physician and employee have properly signed this portion of the Form.

[28] The Clerk says that, once an Application is complete, she submits it to the benefits provider and offers the employee a copy. She says that, in many cases, the employee declines to take a copy and/or specifically requests that she maintain a copy for them.⁷ She says that, regardless of whether an employee asks, she keeps a copy of an employee's Application in a locked cabinet, separate from an employee's personnel file. She says that Applications are not sent to human resources; instead, they are kept in a separate disability folder that also contains ongoing communications with the benefits provider about employee's benefits and return to work.

[29] The Clerk says that the benefits provider occasionally has follow-up questions about an Application after it has been submitted. The Clerk explains that, by keeping a copy of an Application, she can assist an employee by

⁷ I note that no party indicated that the complainant asked the Clerk to keep a copy of her Applications or declined to accept a copy when offered by the Clerk.

responding to any follow up questions from the benefit's provider. She says that keeping a copy of an employee's Application also assists her in generating a record of employee leaves for Weyerhaeuser when such records are required.

[30] The Clerk says that employees routinely call her to ask questions about their Applications, request that she provide them with information from their Applications and/or assist them in identifying mistakes and making changes to their Applications.

[31] On the whole, the Clerk says that she believes that employees reasonably expect her to maintain a copy of their Applications.

[32] Turning to the specific circumstances relating to the complainant, the Clerk says that she helped the complainant apply for short-term disability benefits approximately eight times, including on one occasion when the complainant asked her to assist with filling out the employee portion of the Form.

[33] The Clerk says that she believes that the complainant (and all the employees who requested her assistance in filling out Applications) knew that Weyerhaeuser kept a copy of employees' Applications in the employee's disability file. Weyerhaeuser says it is well-known among employees who request the Clerk's assistance, including the complainant, that the Clerk maintains a copy of the Applications on the employee's behalf to manage any ongoing benefits issues that may arise. Weyerhaeuser says that the complainant would not have asked the Clerk for help filling out the employee portion of the Form if she did not know or believe that it was Weyerhaeuser's practice to maintain copies of her Applications.

[34] The Clerk also says that the benefits provider did follow up with questions about one of the complainant's Applications and that she would not have been able to assist with the claim if she had not kept a copy of the complainant's Applications.

[35] In addition to the Clerk's evidence, Weyerhaeuser submits that the complainant knew about its "benefits practices and related record keeping practices" because she had acted as a union representative on the Weyerhaeuser's Ability Management Committee (Committee).⁸ Weyerhaeuser explains that the Committee is part of a joint effort between management and unionized employees to ensure that employees who are unable to work because of a disability are supported through the accommodation process and can return to work in a safe and inclusive manner. Because the Committee's work includes assisting employees in understanding the benefits process, Weyerhaeuser says the complainant's allegations that are the subject of this inquiry are unreasonable, if not dishonest.

⁸ Weyerhaeuser's initial submissions at para 17.

The complainant's submissions

[36] The complainant says that she applied for short term disability benefits a number of times while she was an employee at Weyerhaeuser. She says that she would get the Form from a secretary at Weyerhaeuser. Then, she says she would bring back the completed physician and employee statements to the secretary who would fax the completed Applications to the benefits providers.⁹

[37] The complainant submits that she did not give her explicit consent to Weyerhaeuser to keep a copy of her Applications. Further, the complainant disputes the fact that it was “no secret” that Weyerhaeuser was keeping copies of employees’ completed Applications.¹⁰

[38] She says that employees who accept the Clerk’s help with understanding and completing the Applications do not automatically consent to the retention of that information. Rather, if an employee accepts assistance filling out the Form, that employee only consents to sharing their personal information with the Clerk for the purpose of that brief and specific task.

[39] The complainant says that she first became aware of the fact that Weyerhaeuser kept copies of her Applications during the WCAT hearing. In her sworn evidence, she explains that, as permitted by Weyerhaeuser, she has reviewed her employee file a couple of times and never noticed any Applications on her file.

[40] The complainant says that, in any case, the requirements of s. 7(1) of PIPA are not met in this case because Weyerhaeuser did not provide notice pursuant to s. 10(1) of PIPA that it would be collecting the personal information in question or the purposes for which it wished to collect the personal information.

Finding – consent

[41] I am not satisfied that the complainant gave consent in accordance with ss. 7(1) and 10(1) of PIPA for Weyerhaeuser to keep a copy of her Applications.

[42] This is because I am not satisfied that Weyerhaeuser gave the complainant notice as required under s. 10(1). Nothing before me indicates that Weyerhaeuser gave the complainant notice, verbally or in writing, that it would be keeping a copy of her Applications. Even if I accept that it is “well-known” among

⁹ The complainant also mentions a portion to be filled out by her bank, see complainant’s sworn statement at para 2. I gather she is referring to the direct deposit form as is listed in Appendix E of the complainant’s submissions. This appears to be a separate form. For clarity, I find that the information on the direct deposit form is not in dispute in this inquiry.

¹⁰ Complainant’s reply submissions, page 1.

employees generally or that the complainant ought to have known that the Clerk would make a copy, I do not think this suffices. The requirement for notice in s. 10(1) places a positive obligation on the organization to actively communicate, either verbally or in writing, the purposes for the collection. I am unable to conclude that Weyerhaeuser did so.

[43] Under s. 7(1), because Weyerhaeuser did not provide notice, the complainant did not consent to the collection. As a result, I find that Weyerhaeuser was not authorized to collect the complainant's Applications under s. 6(2)(a).

[44] Because many of the parties' submissions about consent under s. 6(2)(a) are also relevant to whether the complainant is deemed to have consented under s. 6(2)(c), I will turn to deemed consent next.

Did PIPA deem the complainant to have consented to the collection?

[45] Under s. 6(2)(c), an organization can collect personal information if PIPA deems the individual to have consented to the collection. Section 8 of PIPA sets out the circumstances where an individual is deemed to have consented to the collection (or use or disclosure) of their personal information. The relevant parts of s. 8 are:

8(1) An individual is deemed to consent to the collection, use or disclosure of personal information by an organization for a purpose if

- (a) at the time the consent is deemed to be given, the purpose would be considered to be obvious to a reasonable person, and
- (b) the individual voluntarily provides the personal information to the organization for that purpose.¹¹

[46] An individual's particular preferences do not factor in to what a reasonable person would consider obvious in the circumstances.¹² Rather, I must consider what a hypothetical reasonable person, knowing all of the circumstances, would think was obvious.¹³

[47] Weyerhaeuser says that, to the extent that the complainant did not provide consent under s. 6(2)(a), consent should be deemed. Further to the process outlined above, it says that any reasonable employee in the complainant's position would expect that the Clerk would maintain a copy of completed Applications for the purposes of assisting the employee with ongoing benefits issues. Weyerhaeuser says that it is obvious that it collects the personal

¹¹ Sections 8(2) and (3) are not relevant to this inquiry.

¹² See Order P05-01, 2005 CanLII 18156 (BCIPC) at para 55.

¹³ *Ibid.*

information on employees' Applications to assist employees in filling out, submitting and managing ongoing benefits claims. In fact, it says that collection for this purpose is so obvious that it is unreasonable for the complainant to now argue that she had no idea that the Clerk would collect and maintain the completed Applications on her behalf.

[48] The complainant says that, for Weyerhaeuser to rely on deemed consent, it must show that she reasonably expected Weyerhaeuser to collect, use and disclose her private medical information and that she voluntarily provided the information for *that* purpose.

[49] The complainant argues that she had no reason to assume Weyerhaeuser was keeping a copy of her Applications. She says that the application process does not require Weyerhaeuser to ever see the employee and physician statements. She says that, if an employee does not ask for assistance sending an Application, Weyerhaeuser would never have had the opportunity to make a copy in the first place.

[50] The complainant says she believed that Weyerhaeuser was simply sending the completed Applications to the benefits provider on her behalf and that her implied consent did not extend beyond this purpose. The complainant says that some employees choose to send their Applications from the union's office but it was not practical for her to do so. Rather, because she lives close to Weyerhaeuser's office, she accepted Weyerhaeuser's offer to send the Application on her behalf.

[51] The complainant says she believed the Applications would only be seen and used by the benefits provider and only for the purpose of adjudicating her benefits application. She says that, if the benefits provider has follow-up questions about the employee or physician portions of an Application, those questions would not be properly directed to Weyerhaeuser.

[52] For the reasons that follow, I am not satisfied that the complainant is deemed to have given consent to Weyerhaeuser to keep a copy of her completed Applications for the purpose of managing her ongoing disability matters.

[53] I do not think it is obvious to a reasonable person that, because the complainant asked Weyerhaeuser to send her Applications to the benefits provider on her behalf, Weyerhaeuser would keep a copy for the purpose of managing her ongoing short-term disability matters. The evidence in the inquiry is that employees had the option to either submit the completed physician and employee statements to the benefits provider themselves or have the employer do it on their behalf. If an employee submits their completed employee and physician statements to the benefits provider themselves, the employer would

never have an opportunity to collect the employee and physician statements. Based on this, it is logical to conclude that Weyerhaeuser would not have needed, and therefore taken, a copy of the complainant's Applications.

[54] For these reasons, I do not think that it was obvious to a reasonable person in the complainant's circumstances that the Clerk would keep a copy of her Applications for the purpose of managing her short-term disability claims. Section 8(1)(a) requires that the purpose for the collection be obvious to a reasonable person, and on the facts of this particular case, I am not satisfied that it is. As a result, I find that the complainant was not deemed to have given consent to Weyerhaeuser to collect her information for that purpose.

[55] However, I find that s. 8(1) deemed the complainant to consent to the collection of her personal information in the Applications for the purpose of sending them to the benefits provider. The complainant's own submissions indicate that, when she gave the form to the Clerk, that was the purpose for which she expected Weyerhaeuser to use her personal information. I have no trouble concluding that a reasonable person would find that the purpose for the collection was obvious in those circumstances. It is clear that the complainant voluntarily gave her Applications to the Clerk for this purpose. I find that PIPA authorized Weyerhaeuser to collect the personal information on the complainant's Applications for the purpose of sending the information to the benefits provider.

[56] Weyerhaeuser also argued that it had authority to collect the Applications without the complainant's consent for additional purposes, which I describe below. Since the purpose for the collection affects how long an organization can retain the personal information, I will also address this issue.

Did PIPA authorize Weyerhaeuser to collect the personal information without consent?

[57] Under s. 6(2)(b), an organization can collect personal information if PIPA authorizes the collection without consent. Section 12 sets out circumstances where an organization can collect personal information without consent or from a source other than the individual. In addition, s. 13 sets out circumstances where an organization can collect "employee personal information" without consent.

[58] Weyerhaeuser referred to ss. 12(1)(c) and 13 and so I will address both, starting with s. 12(1)(c).

Section 12(1) – collection without consent

[59] Weyerhaeuser referred to s. 12(1)(c) in its submissions. This section allows an organization to collect personal information without consent or from a source other than the individual if:

- (c) it is reasonable to expect that the collection with the consent of the individual would compromise the availability or the accuracy of the personal information and the collection is reasonable for an investigation or a proceeding,

[60] Section 12(1)(c) comprises two parts:

1. is collection reasonable for an investigation or a proceeding? and;
2. is it reasonable to expect that the collection with the consent of the individual would compromise the availability or the accuracy of the personal information?

[61] Section 12(1)(c) applies if the answer to both questions is “yes.”

Is the collection reasonable for an investigation or proceeding?

[62] Section 1 of PIPA defines both “investigation” and “proceeding.” Weyerhaeuser asserts that the WCAT hearing is a “proceeding.” PIPA defines “proceeding” as follows:

"proceeding" means a civil, a criminal or an administrative proceeding that is related to the allegation of

- (a) a breach of an agreement,
- (b) a contravention of an enactment of Canada or a province, or
- (c) a wrong or a breach of a duty for which a remedy is claimed under an enactment, under the common law or in equity;

[63] I am satisfied that the WCAT hearing is a “proceeding” under (c) of the above definition. This is because the WCAT hearing was about the complainant’s claim for compensation under the *Workers’ Compensation Act*.¹⁴

[64] However, I find that Weyerhaeuser did not collect the complainant’s personal information for the WCAT hearing. As I described above, Weyerhaeuser says that it collected the Application for the purpose of managing the complainant’s ongoing disability matters. Nothing before me indicates that, at the time Weyerhaeuser kept a copy of the complainant’s Applications, it did so for the purpose of the WCAT hearing. Therefore, I find that the collection was not reasonable for the proceeding.

[65] As a result, I find that s. 12(1)(c) did not authorize Weyerhaeuser to collect the complainant’s personal information in her Applications without her consent.

¹⁴ RSBC 1996 c 492.

Section 13(1) – collection of employee personal information without consent

[66] Section 13(1) sets out the circumstances where an organization may collect employee personal information without the consent of the individual.

[67] Section 1 of PIPA defines “employee personal information” as follows:

“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;

[68] Section 13 says:

13(1) Subject to subsection (2), an organization may collect employee personal information without the consent of the individual.

(2) An organization may not collect employee personal information without the consent of the individual unless

(a) section 12 allows the collection of the employee personal information without consent, or

(b) the collection is reasonable for the purposes of establishing, managing or terminating an employment relationship between the organization and the individual.

(3) An organization must notify an individual that it will be collecting employee personal information about the individual and the purposes for the collection before the organization collects the employee personal information without the consent of the individual.

(4) Subsection (3) does not apply to employee personal information if section 12 allows it to be collected without the consent of the individual.

[69] Weyerhaeuser submits that assisting employees with their benefits claims is part of managing the employee relationship and, therefore, it was authorized to make and keep a copy of the complainant’s Applications under s. 13(2)(b).¹⁵

[70] In this case, I can easily dispense with s. 13(2)(b) because, as I concluded above, Weyerhaeuser did not provide the complainant with notice that it was collecting her personal information in the Applications for the purpose of the

¹⁵ It went into greater detail about this argument and the complainant responded. Given my conclusion below, it is not necessary to address the parties’ arguments any further.

collection before it did so. Therefore, I find that Weyerhaeuser did not meet the requirements under s. 13(3).

[71] Because I also found that s. 12(1)(c) did not allow Weyerhaeuser to keep a copy of the complainant's Applications without consent, s. 13(4) does not exempt Weyerhaeuser from giving notice as set out in s. 13(3).

[72] As a result, I find that s. 13 did not authorize Weyerhaeuser to collect the complainant's personal information when it kept a copy of her Applications.

Section 11 – limits on collection

[73] Since, I found that PIPA did not authorize Weyerhaeuser to collect the complainant's personal information in the Applications for the purpose of managing her short-term disability matters, it is not necessary to also address whether the collection for this purpose was in accordance with s. 11.

[74] However, I found that s. 8(1) deemed the complainant to have consented to the collection of her personal information in the Applications for the purpose of sending them to the benefits provider. Therefore, I do need to consider whether s. 11 limits Weyerhaeuser's collection for this purpose.

[75] 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.

[76] Since s. 8(1) deemed the complainant to have given her consent to Weyerhaeuser to collect the Applications for the purpose of sending them to the benefits provider, this was a collection that was "otherwise permitted under this Act." Therefore, the only question that remains is whether the collection was for a purpose that a reasonable person would consider appropriate in the circumstances.

[77] In providing guidance on how to interpret and apply the "reasonable person" standard set out in s. 11, former Commissioner Loukidelis said:

Under s. 11, one has to decide whether the hypothetical reasonable person, knowing the purposes for collection and the surrounding "circumstances", would consider the purposes for collection to be "appropriate". Relevant circumstances may include the kind and amount

of personal information being collected, the uses to which it will be put and any disclosures the organization intends at the time of collection.¹⁶

[78] I have no trouble concluding that a reasonable person would find it appropriate in the circumstances for Weyerhaeuser to collect the personal information in the complainant's Applications for the purpose of sending those Applications to the benefits provider.

[79] The short-term disability application process required the complainant to submit an Application each time she required those benefits. Based on the complainant's submissions, it seems to me that the Clerk's assistance forwarding the Applications to the benefits provider made the process of applying for benefits easier for the complainant. For these reasons, I find it was reasonable for the Clerk to collect the complainant's personal information and send the Applications to the benefits provider on her behalf.

[80] I find that Weyerhaeuser complied with s. 11 when it collected the complainant's personal information for the purpose of sending them to the benefits provider.

Conclusion – collection

[81] For the reasons above, I find that ss. 6(2)(a), (b) and (c) did not authorize Weyerhaeuser to collect the complainant's personal information when it kept a copy of her Applications for the purpose of managing her short-term disability matters.

[82] However, I found that s. 8(1) deemed the complainant to have consented to the collection of her personal information in the Applications for the purpose of sending them to the benefits provider and that this was a purpose that a reasonable person would consider appropriate in the circumstances.

Additional guidance – collection

[83] Weyerhaeuser says it is considering an express consent form for employees to sign regarding the short-term disability application process to ensure that there is no confusion or misunderstanding with regards to its collection of personal information in its employees' Applications.

[84] In my view, obtaining clear and meaningful consent from employees would help to avoid the type of conflict that is the subject of this inquiry. As set out above, consent under PIPA requires that the organization provide notice of the purpose for the collection of the information, stated as precisely as possible. I have no doubt that the Clerk's assistance is valuable to Weyerhaeuser

¹⁶ Order P05-01, 2005 CanLII 18156 (BCIPC) at para 55.

employees who require help applying for short-term disability benefits. However, employees who get help from the Clerk should understand why Weyerhaeuser collects the personal information in their Applications and have the opportunity to choose whether to provide their personal information for that purpose.¹⁷

[85] I turn to whether the organization retained the complainant's Applications in accordance with PIPA.

Retention – s. 35

[86] Section 35 of PIPA sets out an organization's obligations with respect to retention. The provision reads as follows:

35(1) Despite subsection (2), if an organization uses an individual's personal information to make a decision that directly affects the individual, the organization must retain that information for at least one year after using it so that the individual has a reasonable opportunity to obtain access to it.

(2) An organization must destroy its documents containing personal information, or remove the means by which the personal information can be associated with particular individuals, as soon as it is reasonable to assume that

(a) the purpose for which that personal information was collected is no longer being served by retention of the personal information, and

(b) retention is no longer necessary for legal or business purposes.

[87] If both of the requirements under ss. 35(2)(a) and (b) are satisfied, then the organization must do its duty as set out in the opening words of s. 35(2) to destroy its documents containing the personal information, or remove the means by which the personal information can be associated with particular individuals.

Section 35(2)(a) – purpose for collection

[88] Section 35(2)(a) is about whether the purpose for which the personal information was collected is being served by retaining the personal information.

[89] I found that PIPA authorized Weyerhaeuser to collect the personal information in the complainant's Applications only for the purpose of sending them to the benefits provider. Therefore, this is the only purpose for the retention that I am considering in relation to s. 35(2)(a).

¹⁷ This guidance is based on Weyerhaeuser's stated intention of getting consent from its employees to collect Applications. I do not mean to suggest that there is no situation in which Weyerhaeuser could collect information without consent in accordance with ss. 12 or 13 of PIPA.

[90] The complainant says that once the Applications were submitted to the benefits provider, the purpose was complete and that Weyerhaeuser should have destroyed her personal information immediately after submitting each Application to the benefits provider. The complainant says that the process of storing the Applications in a filing cabinet, as explained above, violates s. 35(2) of PIPA.

[91] Weyerhaeuser did not specifically address how long it needed to retain the Applications for the purpose of sending them to the benefits provider.

[92] In my view, the purpose of sending the Applications to the benefits provider was not served by retaining a copy of the Application in Weyerhaeuser's files once it was reasonable to assume the benefits provider received it without issue. To put it in more concrete terms, I think it would have been reasonable for Weyerhaeuser to keep an Application for up to a few weeks after sending it to the benefits provider to ensure that it was properly received.

[93] For these reasons, I conclude that the purpose for which the personal information in the complainant's Applications was collected was not being served by retention of the personal information beyond the period that I explained above.

Section 35(2)(b) – retention necessary for legal or business purposes

[94] Section 35(2)(b) is about whether retention is necessary for business or legal purposes. The term "necessary" appears in several provisions in PIPA. While this term has not explicitly been interpreted in the context of s. 35(2)(b), in relation to other provisions "necessary" has been interpreted to mean more than "simply convenient" but it does not need to be "indispensable."¹⁸ In my view, the same interpretation applies here.

[95] Weyerhaeuser says that it retains Applications for a legitimate business purpose, which is to assist employees with follow-up questions from the benefits provider and with subsequent disability claims. It says that there may be circumstances where an employee has submitted a claim for a reoccurring injury or substantially similar injuries. Weyerhaeuser says that having access to previous applications would be a benefit to the employees who need to re-apply for benefits or make a claim based on a substantially similar injury.

[96] Weyerhaeuser also says that it used the Applications to generate a record of employee leaves, when required.

[97] The complainant says that there is no business or legal purpose served by retaining the information after it was sent to the benefits provider. The complainant says that Weyerhaeuser does not need the personal information on the Applications to manage employee's ongoing disability matters.

¹⁸ 2011 BCIPC 16 at para 78.

[98] I am not persuaded that retaining the complainant's personal information in her Applications was necessary for a business or legal purpose. As I explained above, employees could submit their Applications to the benefits provider on their own. It was completely optional to ask Weyerhaeuser to send an Application on their behalf. While it may have been helpful to an employee for Weyerhaeuser to retain a copy of an Application on their behalf, I do not think retaining information for this purpose was "necessary" in the way that past orders have interpreted that term.

[99] I am also not persuaded that the personal information in the employee and physician portions of the complainant's Applications was necessary to generate a record of the complainant's leaves. After assessing its submissions and evidence, I do not think Weyerhaeuser sufficiently explained how the medical details provided by the complainant and her physician were "necessary" for this purpose. For example, Weyerhaeuser has not adequately explained how generating a record of *the leave* requires the kind of detailed medical information that is in the employee and physician portions of the Applications.

[100] Overall, I am not satisfied that retaining the complainant's Applications was necessary for a business or legal purpose.

Did Weyerhaeuser meet its obligations under s. 35(2)?

[101] The last step in the s. 35(2) analysis is to decide whether the organization met its obligation to either destroy the personal information or remove the means by which the personal information can be associated with the individual as soon as both of the conditions in ss. 35(2)(a) and (b) are met. Only destruction is at issue in this inquiry.¹⁹

[102] Weyerhaeuser says that Applications are not kept indefinitely and that they are ultimately destroyed in accordance with its records retention policies. It says that it destroyed the complainant's Applications. However, Weyerhaeuser did not provide any detail about its record retention policies and how those policies informed its decision to destroy the complainant's Applications. It also did not explain exactly when it destroyed the complainant's Applications, only that it was after the complainant said she did not want Weyerhaeuser to keep them on file.

[103] I conclude that Weyerhaeuser did not meet its obligations under s. 35(2) to destroy the complainant's Applications as soon as both of the conditions under ss. 35(2)(a) and (b) were met. In this case, I have determined that the conditions were met as soon as it was reasonable to conclude that the benefits provider

¹⁹ In other words, no party suggested that Weyerhaeuser was able to, or should have, removed the means by which the personal information could have been associated with the complainant.

received each Application. While I do not know exactly how long Weyerhaeuser retained the complainant's Applications, I am satisfied it was longer than this period. The evidence in this inquiry shows that Weyerhaeuser retained copies of the complainant's Applications from 2003, 2004, 2007, 2008, 2011 and 2017 until at least 2018 when the complainant's WCAT hearing took place.²⁰ In my view, the length of time that Weyerhaeuser kept the complainant's Applications demonstrates that it retained them much longer than was needed to ensure the benefits provider received them.

[104] In conclusion, I find that Weyerhaeuser failed to comply with s. 35(2) of PIPA.

Did PIPA authorize Weyerhaeuser to use and disclose the complainant's personal information?

[105] The complainant says that Weyerhaeuser violated PIPA when it used and disclosed personal information from her Applications at a 2018 WCAT hearing. Above, I found that Weyerhaeuser improperly retained these Applications when it kept them longer than was necessary to ensure the benefits provider received them. It does not make sense to me that PIPA could authorize Weyerhaeuser to use and disclose the complainant's personal information in the Applications for any purpose beyond this timeframe. To find otherwise would undermine the very purpose of s. 35(2).

[106] Since Weyerhaeuser should have destroyed the complainant's Applications before the WCAT hearing took place, I find that PIPA did not authorize it to use and disclose the complainant's personal information for this purpose.

CONCLUSION

[107] For the reasons above, I make the following orders:

1. Under s. 52(3)(e), I confirm Weyerhaeuser's decision to collect the Applications for the purpose of sending them to the benefits provider.
2. Under s. 52(3)(a), I require Weyerhaeuser to comply with its duty to destroy the complainant's Applications in accordance with s. 35(2). I acknowledge that Weyerhaeuser has said that it has already destroyed the complainant's Applications. However, I require Weyerhaeuser to provide me sworn evidence outlining the steps it took to destroy the complainant's Applications.

²⁰ Legal Assistant's affidavit, Exhibit D.

[108] Under s. 53(1), Weyerhaeuser is required to comply with the above orders by **June 23, 2023**.

May 11, 2023

ORIGINAL SIGNED BY

Erika Syrotuck, Adjudicator

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