



Order P23-09

## DLA PIPER (CANADA) LLP

Erika Syrotuck  
Adjudicator

September 7, 2023

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**Summary:** The applicant requested her personal information from DLA Piper (Canada) LLP (DLA Piper) under the *Personal Information Protection Act* (PIPA). The adjudicator found that ss. 23(4)(c) (disclosure would reveal personal information about another individual) and/or 23(4)(d) (disclosure would reveal the identity of an individual who has provided personal information about another individual) applied to the applicant's personal information in two email chains. However, the adjudicator found that DLA Piper was able to provide the applicant with some of her personal information under s. 23(5) and ordered DLA Piper to disclose that information to the applicant.

**Statutes Considered:** *Personal Information Protection Act*, [SBC 2003], c. 63, ss. 1, 23(4)(c), 23(4)(d), and 23(5); *Freedom of Information and Protection of Privacy Act*, [RSBC 1996] c. 165, s. 4(2).

## INTRODUCTION

[1] An applicant requested her personal information from DLA Piper (Canada) LLP (DLA Piper) under the *Personal Information Protection Act* (PIPA). Specifically, she asked for statements about or attributed to her, including in communications among named lawyers and "other DLA Piper parties" and between those lawyers/parties and named entities and individuals.

[2] In response, DLA Piper refused access under s. 23(3)(a) of PIPA, which allows an organization to refuse access because the information is protected by solicitor-client privilege. It also said that ss. 23(4)(c) and (d) may apply. These provisions require an organization to refuse access if the information would reveal personal information about another individual or would reveal the identity of an individual who has provided personal information about another individual.

[3] The applicant requested that the Office of the Information and Privacy Commissioner (OIPC) review DLA Piper’s response.

[4] Mediation did not resolve the issues in dispute and the matter proceeded to inquiry.

[5] At the inquiry, DLA Piper did not provide the documents for my review. Instead, it provided affidavit evidence. I found this sufficient to decide whether s. 23(3)(a) (solicitor-client privilege) applied to the documents containing the applicant’s personal information.

[6] On July 14, 2023, I issued Order P23-06. In that order, I found that s. 23(3)(a) of PIPA authorized DLA Piper to withhold all but two sets of emails containing the applicant’s personal information. Under s. 38(1)(b), I ordered DLA Piper to produce, to me, those emails so that I could decide whether ss. 23(4)(c) or (d) apply to the applicant’s personal information in those documents. DLA Piper complied with Order P23-06. In this order, I will dispose of the remaining issues.

## **ISSUES**

[7] At this inquiry, I must decide whether DLA Piper is required to refuse access to the applicant’s personal information under ss. 23(4)(c) or (d) of PIPA.

[8] Section 51 specifies that it is up to the organization to prove that the applicant has no right of access to their personal information.

## **BACKGROUND**

[9] DLA Piper is a law firm. It provided legal services to an individual (Client) and a corporation through which the Client carried on his business.<sup>1</sup>

[10] The applicant was a friend of the Client, and, at one point, acted for him under a power of attorney.<sup>2</sup>

## **INFORMATION AT ISSUE**

[11] The information at issue is the applicant’s personal information in two sets of email chains, totalling nine pages.<sup>3</sup> Each set of emails is an email chain sent to a lawyer at DLA Piper.<sup>4</sup> In its table of documents, DLA Piper said that the email

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<sup>1</sup> Documents provided by the applicant indicate that the Client controlled this corporation; Applicant’s response submission, Appendix C page 4.

<sup>2</sup> There are further background details set out in Order P23-06 at paras 13-16.

<sup>3</sup> In Order P23-06, I made a finding that the information at issue was the applicant’s “personal information” within the meaning of PIPA. See paras 19-28.

<sup>4</sup> One email chain includes attachments.

chains were sent by an “external party.” Now that DLA Piper has produced the email chains, I confirm that each email chain was sent to a lawyer at DLA Piper by a person who was not another lawyer at DLA Piper, the Client, or the applicant personally.

## DISCUSSION

[12] Section 23(1) gives individuals the right to access their own personal information subject to certain exceptions. The following parts of s. 23(1) are relevant to this inquiry:

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:
  - (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.

[13] 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;

[14] “Contact information” and “work product information” are also terms defined in s. 1 of PIPA:

"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.

[15] I will consider ss. 23(4)(c) and (d) in relation to both sets of emails.

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

[16] Section 23(4)(c) requires that an organization refuse to disclose personal information if the disclosure would reveal personal information about another individual.

[17] DLA Piper says that, in general, its communications with or about the applicant are also the personal information of the Client, and so s. 23(4)(c) requires DLA Piper to refuse to disclose it.<sup>5</sup>

[18] The applicant did not specifically comment on s. 23(4)(c).

[19] I find that some the applicant's personal information in the email chains, if disclosed, would reveal "personal information" of individuals other than the applicant, including the Client. It is identifiable because it includes the individuals' names and details about them. This information is not "contact information" because it was not provided for the purpose of contacting those individuals at their place of business. This information is not "work product information" because the individuals did not prepare or collect the personal information as part of their responsibilities related to their employment. I find that s. 23(4)(c) applies to this information.

[20] However, some of the applicant's personal information in one of the email chains is "work product information" because it was prepared or collected as part of an individual's work responsibilities. Therefore, this information it is not "personal information" and s. 23(4)(c) does not apply to it.

[21] I will also consider whether s. 23(4)(d) applies to any of the applicant's personal information.

***Section 23(4)(d) – the identity of another individual who provided personal information***

[22] Section 23(4)(d) requires that an organization refuse to disclose an individual's personal information if 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.

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<sup>5</sup> DLA Piper's initial submissions, para 88.

[23] Neither DLA Piper nor the applicant made any submissions specifically on s. 23(4)(d).

[24] For the reasons that follow, I find that s. 23(4)(d) applies to the applicant's personal information in the email chains.

[25] For the same reasons as I explained above, I find that the sender(s) provided personal information, within the meaning of PIPA, about the applicant, the Client, and other individuals to lawyers at DLA Piper.

[26] Second, I am satisfied that each set of emails, if disclosed, would reveal the identity of the person who sent it because the emails include their names. I also think that the content of the each of the emails is so detailed and specific that, if disclosed, it would allow the applicant to infer the identify of the person who sent it.

[27] Finally, there is no evidence that the sender(s) of the emails consent to disclosing their identity(s) to the applicant.

[28] Therefore, the requirements of s. 23(4)(d) are met.

[29] In summary, I find that ss. 23(4)(c) and/or (d) apply to all of the applicant's personal information in the two email chains that are the subject of this order.

### **Section 23(5) - severing**

[30] Section 23(5) requires that, if an organization is able to remove the information referred to in ss. 23(3) (a), (b) or (c) or 23(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 ss. 23(3) (a), (b) or (c) or 23(4) is removed.

[31] I have considered whether it is possible to remove the information in ss. 23(4)(c) and (d) and provide the remainder to the applicant.

[32] After carefully reviewing both email chains, I have decided that the applicant's personal information is so intertwined with the information that DLA Piper must withhold under ss. 23(4)(c) and (d) that it is not possible to provide the applicant with the vast majority of her personal information. However, a small amount of information from each of the email chains can be provided to her without revealing the personal information of another person or the identity of the sender(s).

[33] I have considered whether s. 23(5) requires DLA Piper to give the applicant small amounts of her personal information that may not reveal much, if anything, about the nature of the emails. While s. 4(2) of the *Freedom of*

*Information and Protection of Privacy Act*<sup>6</sup> only requires reasonable severing, PIPA contains no such provision. Similarly, s. 23(5) itself contains no language qualifying the nature or amount of the information that the organization must provide. Therefore, I conclude that PIPA requires an organization to provide all the applicant's personal information that it can without revealing information that it is required to withhold under ss. 23(3) (a), (b) or (c) or (4) of PIPA.

## **CONCLUSION**

[34] For the reasons above, under s. 52(2) of PIPA, I make the following orders:

1. I require DLA Piper to give the applicant access to the information that I have highlighted in the copy of the documents sent to DLA Piper along with this order.
2. I require DLA Piper to refuse the applicant access to the remainder of the applicant's personal information under ss. 23(4)(c) and/or (d).
3. DLA Piper must copy the registrar of inquiries on its response to the applicant.

[35] Under s. 53(1), DLA Piper must comply with the above order by October 20, 2023.

September 7, 2023

## **ORIGINAL SIGNED BY**

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Erika Syrotuck, Adjudicator

OIPC File No.: P20-82745

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<sup>6</sup> RSBC 1996, c. 165.