



OFFICE OF THE
INFORMATION &
PRIVACY COMMISSIONER
FOR BRITISH COLUMBIA

Order P24-02

GREEN APPLE ART CENTER

D. Hans Hwang
Adjudicator

January 15, 2024

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Summary: An applicant requested information from Green Apple Art Center (Green Apple) under the *Personal Information Protection Act* (PIPA). Green Apple did not respond. During the inquiry, Green Apple provided some of the requested information to the applicant. The Adjudicator found that Green Apple failed to meet its obligations under s. 29(1) (time limit for response) and ordered Green Apple to respond to the request within three weeks, in compliance with the requirements of ss. 28 and 30 of PIPA.

Statutes Considered: *Personal Information Protection Act*, [SBC 2003], c. 63, ss. 1, 28, 28(b), 29(1)(a), 29(1)(b), 30(1).

INTRODUCTION

[1] An individual (applicant) requested her personal information from Green Apple Art Center (Green Apple) under the *Personal Information Protection Act* (PIPA).

[2] Green Apple did not respond. The applicant requested that the Office of the Information and Privacy Commissioner (OIPC) review Green Apple's failure to respond to her access request within the time frame required by PIPA.¹

ISSUE

[3] The issue I must decide in this inquiry is whether Green Apple responded to the applicant's access request in accordance with the timelines set out in s. 29(1) of PIPA.

¹ There was no dispute that the individual is an "applicant" and the Green Apple is an "organization" as those terms are defined in PIPA.

Burden of proof

[4] PIPA does not expressly state who has the burden of proof in relation to s. 29(1). Previous OIPC orders have found that where PIPA does not specify who has the burden of proof, it is in each party's interest to provide information and evidence to support and justify its position.²

DISCUSSION**Background³**

[5] The applicant commenced employment at Green Apple in October 2018 and her employment continued until April 2023.⁴ On May 25, 2023, the applicant requested copies of her wage statements, payroll records and personnel file from Green Apple for the period between 2018 and 2023 (requested information).⁵ Eight days later, Green Apple acknowledged receipt of the applicant's request and said that it anticipated sending its response "on or before Monday."⁶ Green Apple never sent a response. The applicant requested a review from the OIPC.

Time limit for response, s. 29

[6] Section 29(1) imposes obligations on an organization to respond to information requests. This section reads:

29 (1) Subject to this section, an organization must respond to an applicant not later than

- (a) 30 days after receiving the applicant's request, or
- (b) the end of an extended time period if the time period is extended under section 31.

[7] Sections 29(1)(a) and (b) provide that an organization must respond to an applicant within 30 days⁷ unless the conditions for an extension under s. 31 apply. Section 31 reads:

31 (1) An organization may extend the time for responding to a request under section 23 for up to an additional 30 days or, with the commissioner's permission, for a longer period if

² Order P09-02, 2009 CanLII 67292 at para 4; Order P21-03, 2021 BCIPC 11 at para 30; Order P23-10, 2023 BCIPC 86 at para 9.

³ The information in this background is not in dispute between the parties.

⁴ Applicant's response submission at para 3.

⁵ The applicant's access request dated May 25, 2023.

⁶ Green Apple's lawyer's June 2, 2023 email to the applicant's lawyer.

⁷ The calculation of days is based on the definition of "day" in s. 1 of PIPA.

- (a) the applicant does not give enough detail to enable the organization to identify the personal information requested,
 - (b) a large amount of personal information is requested or must be searched and meeting the time limit would unreasonably interfere with the operations of the organization, or
 - (c) more time is needed to consult with another organization or public body before the organization is able to decide whether or not to give the applicant access to a requested document.
- (2) If the time is extended under subsection (1), the organization must tell the applicant
- (a) the reason for the extension,
 - (b) the time when a response from the organization can be expected, and
 - (c) the rights of the applicant to complain about the extension and request that an order be made under section 52 (3) (b).

[8] Having considered the parties' submissions, I find that Green Apple has not performed its duty under s. 29(1). The applicant requested her personal information on May 25, 2023 and Green Apple had until July 6, 2023 to respond. Green Apple does not dispute it did not respond to the request and Green Apple's president says this was due to "ongoing personal and family issues".⁸ Green Apple does not assert that the conditions for a time extension under s. 31(1) applied in this case, and I am not satisfied that they did. Therefore, I conclude that Green Apple failed to respond to the applicant's request in compliance with the time limit under s. 29(1).

What is the appropriate remedy?

[9] In cases involving s. 29, the usual remedy is to order the organization to respond to the applicant's access request, in accordance with ss. 28 and 30 of PIPA, by a particular date.⁹

[10] Sections 28 and 30 of PIPA establish what is required of an organization when responding to a request from an applicant. Section 28(b) requires an organization to make a reasonable effort to respond to each applicant as accurately and completely as reasonably possible. The requirements of s. 28(b) are informed by s. 30(1). Section 30(1) reads:

In a response under section 28, if access to all or part of the personal information requested by the applicant is refused, the organization must tell the applicant

- (a) the reasons for the refusal and the provision of this Act on which the refusal is based,

⁸ Green Apple's initial submission at p 1.

- (b) the name, position title, business address and business telephone number of an officer or employee of the organization who can answer the applicant's questions about the refusal, and
- (c) that the applicant may ask for a review under section 47 within 30 days of being notified of the refusal.

[11] In its initial inquiry submission, Green Apple appears to be providing what it considers to be a response to the applicant's access request. It says that it did not find the applicant's payroll records and believes she already has her personnel file.¹⁰

[12] I find that what Green Apple says in its inquiry submission is not a response in accordance with ss. 28 and 30 of PIPA. What Green Apple says is not complete because it does not satisfactorily meet the requirements of s. 30(1). I can see that the president is acting as an officer who could answer questions about the refusal.¹¹ However, Green Apple does not identify the provision(s) of PIPA on which its refusal to provide the requested information was based or inform the applicant of her right to ask for a review under s. 47. While Green Apple's inquiry submission provides some reasons for the refusal and the lack of response (because the president had personal issues), those reasons are not a basis for denying access under PIPA. For these reasons, I find that Green Apple's inquiry submission is not a response to the applicant's request as required by PIPA.

[13] I find that the appropriate remedy in this case is to require Green Apple to respond to the applicant's request, in compliance with ss. 28 and 30, by February 5, 2024.

CONCLUSION

[14] For the reasons given above, I make the following order under s. 52(3) and (4) of PIPA.

1. I require Green Apple to respond to the applicant's request by February 5, 2024. In doing so, Green Apple must comply with ss. 28 and 30 of PIPA.
2. I require Green Apple to copy the OIPC registrar of inquiries on its cover letter to the applicant, together with a copy of the response described at item 1.

¹⁰ Green Apple's reply submissions paras 2B and 2C.

¹¹ The president has submitted the initial and reply submissions on behalf of Green Apple.

January 15, 2024

ORIGINAL SIGNED BY

D. Hans Hwang, Adjudicator

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