



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
— for —
British Columbia

Decision F10-03

MINISTRY OF FINANCE

Michael McEvoy, Adjudicator

March 16, 2010

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Summary: A person complained that the Ministry improperly disclosed his credit information to Equifax. The Ministry argued it was entitled to do so because the complainant consented to the release of the personal information. The Ministry also argued it was allowed to do so in order to collect the complainant's unpaid student loans. The complainant argued that in the event he did consent to the release of the personal information he subsequently revoked that consent. The complainant also disputed that he owed a debt. The Ministry was authorized to release the information because the complainant consented to its release. The Ministry was also authorized to disclose the personal information for the purpose of collecting amounts owing to the Province.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 33.1(1)(b) and 33.1(1)(i)(i)(A); *Bankruptcy and Insolvency Act*, s. 178(1)(g); *Business Practices and Consumer Protection Act*, s. 116(4).

1.0 INTRODUCTION

[1] The case arises from a complaint that the Ministry of Finance ("Ministry")¹ improperly disclosed a person's ("complainant") credit information to Equifax.²

[2] The Ministry responded that the complainant consented to the disclosure of the information and that s. 33.1(1)(i)(i)(A) of the *Freedom of Information and*

¹ The Ministry of Small Business and Revenue was the public body responsible for dealing with the complaint initially. Subsequently the Ministry of Finance assumed responsibility.

² A private consumer-reporting agency.

Protection of Privacy Act (“FIPPA”) permitted the disclosure because it was for the purposes of collecting a debt owed to the government of British Columbia.

[3] The complainant disputed there was a debt owing and said that, if he did consent to the disclosure of the information, he subsequently revoked that consent. He complained to this Office about the Ministry’s actions.

[4] This Office assigned a Portfolio Officer to investigate the matter, which led to an agreement by the parties that the issues in dispute would proceed to a hearing for determination.

2.0 ISSUES

[5] The issues are as follows:

1. Was the Ministry authorized to disclose the credit information on the basis that the complainant consented to its release?
2. Was the Ministry authorized to disclose the credit information because it was for the purpose of collecting amounts owing to the government of British Columbia?

[6] Section 57 is silent as to which party has the burden of proof in these cases and as a practical matter it is up to each party to present argument and evidence as to whether the provisions in issue apply.

3.0 DISCUSSION

[7] I have carefully considered all submissions and I refer to the most pertinent of those below.

[8] The Ministry says that the Province of British Columbia provided the complainant with five student loans totaling \$14,589 between 2002 and 2004 while he attended law school.³ The Ministry submitted copies of the front page of each of the five student loan agreements (“Loan Agreements”) and one copy of the back of one of the Loan Agreements the Ministry says is common to all of them.⁴ Each Loan Agreement contains a signature above the name of the complainant. According to the Ministry, the complainant assigned himself into bankruptcy in 2004 in Ontario. The Ministry says the complainant was discharged from bankruptcy in 2005 and his trustee was discharged in 2006. Pursuant to the Loan Agreements, the Ministry states the complainant was considered in default of his student loans upon bankruptcy. The Ministry also submits that the student loans were not discharged by the bankruptcy because, under s. 178(1)(g) of the *Bankruptcy and Insolvency Act*, it had not been 10

³ Ministry’s initial submission, para. 1.03.; Affidavit of Jill Piechotta, para. 4.

⁴ Affidavit of Jill Piechotta, para. 3.

years since the complainant was a student.⁵ The Ministry says the complainant has not made a payment on his loans since 2004.

[9] The Ministry states it contracted out responsibility for collecting the debts on student loans that are 150 or more days overdue, including the complainant's, to EAS Advanced Solutions Inc. ("EAS"). The Ministry says it turned over information concerning the complainant's delinquent loans to EAS in 2008. According to the Ministry, EAS reported the complainant's loan default to Equifax shortly thereafter.⁶

[10] The Ministry submits that s. 30.4 of FIPPA provides that an employee of a public body who has access to personal information must not disclose it unless authorized by FIPPA. The Ministry notes that FIPPA defines "employee" as including a "service provider" which EAS is because it is retained by the Province to perform debt collection services. As such, the Ministry says, s. 30.4 applies to EAS's disclosure of the personal information to Equifax "given that the Ministry retains "control" over such personal information, for the purposes of [FIPPA], where it is in the custody of EAS".⁷

[11] The Ministry argues that it properly disclosed the complainant's personal information because the complainant consented to its release and because the Province used it to collect debts owing to it by the complainant. It submits that s. 33 authorizes both types of disclosure.

[12] The Ministry argues that EAS was authorized by s. 33.1(1)(b) to disclose the personal information because the complainant consented to its release. The Ministry says the Loan Agreements the complainant signed authorize the Province or its agent to disclose to a consumer reporting agency "all particulars and information or personal information relevant to student loans" as well as using the information for collection purposes in the event the complainant defaults on his loan.⁸

⁵ Ministry's initial submission, para. 110. The Ministry notes that the legislation was subsequently amended to reduce the time from 10 to 7 years but that this occurred after the complainant was bankrupt and therefore does not apply to him.

⁶ Ministry's initial submission, paras. 1.16, 1.17 and 4.01. The Ministry adds that "the Province and EAS entered into an agreement that EAS would only provide credit information to Equifax in respect to student loans for the specific purposes of allowing Equifax to upload such credit information to a consumer credit file or to create a consumer credit report, and Equifax would not upload any information received by EAS other than the Student Loan Credit Uploads. That agreement also provided that Equifax would not update its credit files or create a consumer credit file with the inquiry information provided by EAS to Equifax in order for EAS to access a consumer credit report (as distinct from the Student Loan Credit Uploads). The agreement also included privacy protection provisions which were later incorporated into EAS's contract with Equifax".

⁷ Ministry's initial submission, paras. 4.06 and 4.07.

⁸ Ministry's initial submission, para. 4.21.

[13] The Ministry argues that the complainant is not entitled to revoke his consent once given as part of a written agreement. To do so, it submits, would be to purport to unilaterally amend a legally enforceable contract.⁹

[14] The Ministry also argues that the complainant owed and still owes a monetary debt to the Province. It says that the complainant disputes that he owes this debt and that the Province is involved in a legal action in relation to the debt that has not yet concluded. The Ministry submits that the court, not the Commissioner, must make a final adjudication about whether the Province is correct in taking the position that the complainant owes money to the Province in the circumstances. The Ministry submits that all a public body needs to do in order to justify its reliance on s. 33.1(1)(i)(i)(A) of FIPPA is to satisfy the Commissioner that it has a *prima facie* case that a debt is owed to it. The Ministry submits that it has more than done so in this case.

[15] The Ministry says the Province sanctioned EAS to disclose debt information to Equifax to assist it in the collection of the complainant's debts. The Ministry argues that such a disclosure alerts other potential creditors to the existence of a delinquent debt on the part of a debtor — a relevant factor in determining a person's ability to repay a debt. It contends that permitting potential creditors access to such information acts as an impediment to a debtor's ability to take on additional debt. This, in turn, enhances the ability of existing creditors, including the Province, to collect amounts currently owing to it. Secondly, the Ministry contends that reporting the debt

...enhances the ability of the Province, as creditor, to encourage debtors to pay their overdue student loans in a timely manner because the debtor will realize that the continued reporting of such information to a credit reporting agency will negatively impact their credit rating.¹⁰

[16] The complainant disputes that he owes a debt to the Province. He refers to s. 116(4) of the *Business Practices and Consumer Protection Act*:

A collector must not continue to communicate with a debtor

- (c) if the debtor has notified the collector and the creditor that the debt is in dispute and that the debtor would like the creditor to take the matter to court.

[17] The complainant says that in April 2008 he wrote the Ministry disputing the debt and invited it to take him to court "to prove the debt".¹¹ He submits that:¹²

⁹ Ministry's initial submission, paras. 4.23 and 4.27.

¹⁰ Ministry's initial submission, para. 4.16.

¹¹ Complainant's initial submission, para. 13.

¹² Complainant's initial submission, para. 15.

Despite the disputing of the debt by the Complainant, and the fact that the Public Body could not prove *prima facie* that the debt was owing (and had to revert to the Courts of the Province of British Columbia to prove the debt)...the Public Body refused to remove any notations regarding the alleged debt from the Complainant's Equifax consumer credit report.

[18] The complainant submits the Ministry has the onus to prove that there are actual amounts owing to the government of British Columbia. He submits that the dispute of the "alleged debt" and the Ministry's legal action are "prima facie proof there is no provable, established amount owing".¹³ The complainant submits that the legal dispute indicates there may be amounts owing to the Province but that this is not established until the court makes a decision.¹⁴ He argues that, if the Ministry were "so confident that an alleged debt prima facie is owing to it, there are legal processes it can engage to have rapid and efficient judgment prior to it relying on s. 33.1(1)(i)(i)(A)."¹⁵ He argues that permitting the Ministry to disclose his information to Equifax when the debt is in dispute "creates a situation of 'guilty until proven innocent'".¹⁶ The complainant asks whether it is "reasonable" to permit a public body to impose such "prejudicial and interfering consequences" on him without a court judgement. He argues the Ministry is not able to rely upon s. 33.1(1)(i)(i)(A) and asks, among other things, that I order the Ministry to immediately remove the disputed information from the Equifax credit report and not to disclose any further information about the complainant or disputed debt until any court "has determined them to be valid".¹⁷

[19] In the alternative, the complainant submits that, if the debt is found to be valid, he has not given, or has withdrawn, his consent to disclose his personal information pursuant to s. 33.1(1)(b) of FIPPA. He argues that the "alleged" Loan Agreements attached to the affidavit of Jill Piechotta, a Compliance Officer with the Receivables Management Office of the Ministry of Finance, do not contain a contract term prohibiting the complainant from revoking his consent.¹⁸

[20] The complainant further contends that the terms of the Loan Agreements are ambiguous concerning the authorization of consent and should be "read against" the Ministry.¹⁹

In short, the Complainant submits that if the Province of British Columbia wanted to prohibit a person from revoking consent, or it wanted to make consent mandatory for the term of the contract or until alleged student loan

¹³ Complainant's initial submission, paras. 16 and 17.

¹⁴ Complainant's initial submission, para. 18.

¹⁵ Complainant's reply submission, para. 13.

¹⁶ Complainant's initial submission, para. 19.

¹⁷ Complainant's initial submission, para. 26.

¹⁸ Complainant's reply submission, para. 33.

¹⁹ Complainant's reply submission, para. 34.

debts were paid, it would have put that in the Student Loan Agreements or passed a law...

Findings

[21] Section 33.1(1)(b) of FIPPA reads as follows:

33.1(1)A public body may disclose personal information referred to in section 33 inside or outside Canada as follows:

...

- (b) if the individual the information is about has identified the information and consented, in the prescribed manner, to its disclosure inside or outside Canada, as applicable;

[22] Jill Piechotta deposed that the complainant received five student loans and attached a copy of the front page of each of the Loan Agreements as Exhibit A to her affidavit. The complainant's signature appears to be at the bottom of each.

[23] The Loan Agreements contain the following recitals:

2. I acknowledge that, upon receipt of the Amount of the Disbursement, I will owe and promise to pay the Province of British Columbia (BC) the Amount of Disbursement.
5. I authorize the Province of BC or its agent, the British Columbia Student Loan Service Bureau (BCSLSB), to disclose to and obtain from any: a) consumer credit grantor, credit bureau or other credit reporting agency; b) person with whom I may have or had financial dealings; or c) person in connection with any dealings I have or propose with the Province of BC or its authorized agent BCSCSLB, all particulars and information or personal information relevant to student loans. I agree that the Province of BC or its authorized agent BCSCSLB may use information for collection purposes should I default on my BCSL.

[24] In reply to this sworn evidence and supporting materials, the complainant says, "that if he did sign the Student Loan Agreements, which he denies, there was no clause preventing him from revoking consent".²⁰ The complainant's reply did not elaborate on his denial.

[25] I am satisfied based on Exhibit A to the sworn affidavit of Jill Piechotta that the complainant signed the Loan Agreements in question. The Province would not have loaned the money to the complainant (which he does not deny receiving) without receiving a signed acknowledgement from the complainant.

²⁰ Complainant's reply submission, para. 32.

[26] In doing so, the complainant consented to the release of his personal information. The recitals in the signed Loan Agreements clearly provide for this consent and, contrary to the complainant's claim, there is nothing ambiguous about the wording in these acknowledgements. As for revoking this consent, I do not see how the complainant could unilaterally do so. The consent formed part of a contractual undertaking. In return for obtaining the loans, the complainant agreed to certain things, including giving the right to the Province to convey his personal information to a credit agency. The complainant could no more revoke these commitments than he could unilaterally excuse himself from his commitment to pay back the loans. For these reasons, I find that the Ministry's disclosure of the complainant's personal information to Equifax was in accordance with s. 33.1(1)(b) of FIPPA.

[27] Given the above findings it is not necessary that I determine whether the disclosure of the personal information to Equifax is also authorized under s. 33.1(1)(i)(i)(A) of FIPPA. However, for the sake of completeness I consider below whether s. 33.1(1)(i)(i)(A) of FIPPA authorizes the Ministry to disclose the complainant's personal information.

[28] Section 33.1(1)(i)(i)(A) reads as follows:

33.1(1)A public body may disclose personal information referred to in section 33 inside or outside Canada as follows:

...

(i) if

(i) the disclosure is for the purposes of collecting amounts owing to the government of British Columbia or a public body by

(A) an individual, ...

[29] Exhibit A to the affidavit of Jill Piechotta establishes that the Province advanced the complainant money under the terms of the Loan Agreements and that the complainant received five such student loans.

[30] Jill Piechotta deposes that the complainant has made no payments in respect of those loans since July 2004. According to the complainant's bankruptcy records attached as Exhibit C to Jill Piechotta's affidavit, the complainant owes the Province \$14,556.46, almost the entire amount of the original loans.

[31] Taken together, the submissions and evidence establish that the complainant owes the Province money for unpaid student loans. The complainant's discharge from bankruptcy did not extinguish his loan obligations because, under s. 178(1)(g) of the *Bankruptcy and Insolvency Act*, it had been less than 10 years since the complainant was a student. I also accept the sworn evidence of Steven Emery of the Ministry of Finance that

disclosing the complainant's personal information to Equifax was intended to assist EAS in collecting the amounts owing by the complainant, thereby satisfying the requisite elements of s. 33.1(1)(i)(i)(A).

[32] The complainant asserts that because he disputes the debt, and the Province has taken legal action against him, this is "*prima facie* proof there is no provable, established amount owing."²¹ The complainant's dispute of the debt is a bald assertion, not "proof". Similarly, the complainant's insistence that the Province take him to court over the debt is also not, by itself, evidence disproving the debt. My task here is to adjudicate the matters under s. 33.1 of FIPPA based on the submissions and evidence. The complainant's submissions do not impugn the clear evidence before me that the complainant owes money to the Province, thus authorizing the Ministry to disclose the complainant's personal information to Equifax under s. 33.1(1)(i)(i)(A) of FIPPA for the purpose of collecting the amounts owing.

4.0 CONCLUSION

[33] The Ministry properly disclosed the personal information at issue because it did so in accordance with ss. 33.1(1)(i)(i)(A) and 33.1(1)(b) of FIPPA. Therefore, even if I have the authority to grant the remedies sought by the complainant in this matter I decline to do so.

March 16, 2010

ORIGINAL SIGNED BY

Michael McEvoy
Adjudicator

OIPC File No. F08-34562

²¹ Complainant's initial submission, para. 17.