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Order P13-03

WEYERHAEUSER COMPANY LIMITED

Ross Alexander, Adjudicator

December 6, 2013

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Summary: Weyerhaeuser applied for authority to disregard access and correction requests from a former employee under s. 37 of PIPA. The adjudicator authorized Weyerhaeuser to disregard the outstanding and future requests.

Statutes Considered: *Personal Information Protection Act*, ss. 23, 24 and 37.

Authorities Considered: B.C.: Authorization No. (s. 43) 02-02, [2002] B.C.I.P.C.D. No. 57; Order F13-18, [2013] B.C.I.P.C.D. No. 25; Decision P05-01, [2005] B.C.I.P.C.D. No. 23; Decision F11-04, [2011] B.C.I.P.C.D. No. 40; Decision F10-09, [2010] B.C.I.P.C.D. No. 47. **Ont.:** Order M-618, [1995] O.I.P.C. No. 385.

Cases Considered: *Crocker v. British Columbia (Information and Privacy Commissioner)*, [1997] B.C.J. No. 2691.

INTRODUCTION

[1] This is an application by Weyerhaeuser Company Limited ("Weyerhaeuser") for authority to disregard requests by a former employee ("respondent") for access to, and correction of, her personal information.

[2] The *Personal Information Protection Act* ("PIPA") gives individuals the right to request access to, or correction of, their personal information that is under the control of an organization. However, the Commissioner may authorize an organization to

disregard such requests in specific circumstances pursuant to s. 37 of PIPA. Weyerhaeuser has applied to the Office of the Information and Privacy Commissioner ("OIPC") to disregard the respondent's requests.

ISSUE

[3] The issue in this inquiry is whether Weyerhaeuser is authorized by s. 37 of PIPA to disregard requests by the respondent. Specifically, Weyerhaeuser seeks authorization to disregard the respondent's current and future requests for:

- general non-personal information;
- changes to the respondent's personal information in court documents and other records outside of the scope of PIPA;
- any of the respondent's personal information that has been the subject of previous information requests, or has already been provided to the respondent; and
- any corrections to personal information that have already been addressed by Weyerhaeuser.

Background

[4] The respondent worked at Weyerhaeuser from the early 1980's until 2002.

[5] In 2002, she went on disability leave, and began receiving benefits through Weyerhaeuser's insurer.

[6] In the spring of 2004, Weyerhaeuser concluded the respondent was fit for work. Around that same time period, it sent the respondent a letter terminating her employment. The insurance company also terminated her benefits.

[7] In July 2004, the respondent requested her personnel and medical files from Weyerhaeuser and the insurance company. The insurance company and Weyerhaeuser each provided her with records, but Weyerhaeuser informed the respondent that, "…we were unable to track down your official personnel file, which appears to have gone astray during one of our recent restructurings."[1] The records the insurance company provided the respondent contained emails between the insurance company and Weyerhaeuser that were not in records the respondent received from Weyerhaeuser.[2]

[1] Respondent submissions, at Appendix 17.
[2] Respondent submissions, at para. 28.

[8] In 2005, the respondent commenced a court action against Weyerhaeuser and the insurance company regarding the termination of her employment and the discontinuance of her benefits ("litigation").[3] Subsequently, some of the respondent's benefits were reinstated. As of the day this inquiry closed, the litigation was ongoing.

[9] Since late 2009, the respondent has sent Weyerhaeuser a series of letters containing questions and requests. The questions and requests primarily relate to benefits she is receiving and those she believes she is entitled to receive, as well as events that occurred in 2003 and 2004 that relate to her disability leave and dismissal.

[10] On January 7, 2010, Weyerhaeuser provided the respondent with copies of the documents in its files related to her employment with the exception of documents that Weyerhaeuser says were created for the purpose of defending the litigation. The respondent was not satisfied with Weyerhaeuser's disclosure and sent Weyerhaeuser a series of further demands for information.

[11] On August 4, 2010, the respondent complained to the OIPC that Weyerhaeuser had failed to provide an accurate and complete response to her requests. The OIPC investigated the complaint, and closed its file after concluding that Weyerhaeuser's search for information met its duties under PIPA. The respondent complained to the OIPC about this decision, and the OIPC agreed to reopen its file and conduct a further investigation.

[12] In this subsequent investigation, an OIPC investigator accepted Weyerhaeuser's estimate that it had spent more than 100 hours searching for information relating to the request that was the subject of the complaint, and that it had searched three offices, recalled boxes of records from its offsite storage and retrieved records from its outside legal counsel. The investigator concluded Weyerhaeuser had fulfilled its duty under PIPA to assist the respondent with her requests, and advised the respondent by an April 25, 2012 letter that her file was being closed.

[13] Subsequent to this, the respondent continued to correspond with Weyerhaeuser, requesting information and answers to questions.

[14] On October 16, 2012, the respondent sent Weyerhaeuser a 10-page letter containing further requests for information. She followed this by sending the company a form on October 19, 2012 that is entitled "Request to Access Personal Information and/or Request to Correct Personal Information", in which she requested that Weyerhaeuser "correct" her personal information.[4] The respondent stated this request was in accordance with previous letters she had sent to Weyerhaeuser on May 2,

[3] The writ of summons was served in 2005. However, the claim may have been filed before then.
[4] This a form on the OIPC website to assist individuals with making requests under PIPA.

May 22, June 12, and October 16, 2012. In response to the correspondence described in this paragraph, Weyerhaeuser filed the s. 37 application that is the subject of this inquiry.

DISCUSSION

[15] Section 37 authorizes organizations to disregard requests in certain circumstances. Section 37 states:

> If asked by an organization, the commissioner may authorize the organization to disregard requests under section 23 or 24 that
>
> (a) would unreasonably interfere with the operations of the organization because of the repetitious or systematic nature of the requests, or
>
> (b) are frivolous or vexatious.

[16] The relevant parts of ss. 23(1) and 24(1) for this inquiry are:

> 23(1) Subject to subsections (2) to (5), on request of an individual, an organization must provide the individual with the following:
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> (a) the individual's personal information under the control of the organization;
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> 24(1) An individual may request an organization to correct an error or omission in the personal information that is
>
> (a) about the individual, and
>
> (b) under the control of the organization.

[17] I will first determine what requests are outstanding, which Weyerhaeuser says are contained in the letters incorporated by the respondent's October 19 request form and her October 16 letter.

Letters of May 2, May 22, and June 12, 2012

[18] These three letters allege that Weyerhaeuser has treated her badly and make demands related to the litigation. These are not access requests and therefore not matters that Weyerhaeuser is obliged to respond to under PIPA.

[19] The letters do contain requests to correct personal information about the respondent in court documents. However, s. 24 does not apply to this information because s. 3(2)(e)(i) of PIPA states that "court documents" are not within the scope of PIPA. Therefore, these three letters do not contain any requests for access or

correction within the meaning of ss. 23 or 24 of PIPA that Weyerhaeuser is required to respond to under PIPA, so I do not need to consider them for the purpose of making a remedial order under s. 37 of PIPA.

The October 16, 2012 letter

[20] The respondent's remaining requests are those in the October 16, 2012 letter. This 10-page letter contains approximately 50 questions and other comments. Most of these questions are outside of the scope of PIPA because they are not access requests. Rather, they are simply questions – many of which relate to the respondent – that do not seek the respondent's personal information. As such, these questions also do not oblige Weyerhaeuser to respond under PIPA, nor do they require me to issue a remedial order.

[21] The October 16 correspondence also contains requests for correction of the respondent's personal information. However, like the correction requests noted in respect of the above letters, these October 16 requests are not within the scope of s. 24 because they relate to court documents excluded from PIPA under s. 3(2)(e)(i) of PIPA.

[22] There are some requests, however, that are within the scope of PIPA. These requests are for:

a) a copy of the respondent's "return to work certificate" from 2004;

b) unredacted copies of email correspondence that Weyerhaeuser previously provided to the respondent in redacted form. These redacted emails are records that Weyerhaeuser received from the insurance company in the course of the litigation;

c) a record of communications between Weyerhaeuser and the insurance company regarding the respondent; and

d) copies of personal information about the respondent's pension and benefits, including information regarding the respondent's life insurance premiums and T4A tax slips that Weyerhaeuser issued to the respondent.[5]

[23] I will refer to these requests as the outstanding requests.

Positions of the Parties with Respect to the Outstanding Requests

[24] Weyerhaeuser submits that it has already responded to the outstanding requests (other than information it withholds on the basis of privilege) through

[5] The requests are in the October 16, 2012 letter at headings 1, 3, 4, 9, et. al.

responses to prior requests and disclosure required by the litigation. For this reason, Weyerhaeuser submits that the respondent's outstanding requests are repetitious, systemic and unreasonably interfere with its operations within the meaning of s. 37. Weyerhaeuser also submits that they are vexatious because they:

> a) abuse the rights conferred under PIPA in that they tend to seek non-personal information under the guise of requests for personal information, seek responses to questions that go beyond the definition of personal information, and demand that changes be made to court documents that are outside the scope of PIPA;
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> b) have consumed hundreds of hours of Weyerhaeuser's time for it to provide responses, and have caused Weyerhaeuser to incur unreasonable costs; and
>
> c) appear to be made for collateral purposes in some cases, including to pressure Weyerhaeuser with respect to the PIPA requests or in the litigation, or to embarrass named former or current employees.

[25] The respondent submits that her requests are not systematic or vexatious. She does not dispute making repeated requests for information. However, she states that she has been forced to repeat her requests because Weyerhaeuser's replies have been unclear, contradictory, incomplete, misleading or do not answer her requests. She states that she is a victim who is being treated as a pest and nuisance for wanting information that she is entitled to receive from Weyerhaeuser. She submits that her objectives are to ascertain her extended health benefits and her future retirement pension, and also to find out how her personal information was used, by whom and how it was disclosed.

[26] It is apparent from the respondent's submission that she particularly wants information relating to her benefits, and information about why Weyerhaeuser took certain action in relation to her in 2003 and 2004.

Are the respondent's actions vexatious?

[27] I will first address Weyerhaeuser's contention that the respondent's requests are vexatious under s. 37(b).

[28] The word "vexatious" usually means "with intent to annoy, harass, embarrass or cause discomfort".[6] However, previous orders have noted that access to information

[6] Authorization No. (s. 43) 02-02, [2002] B.C.I.P.C.D. No. 57 at para. 20, citing Ontario Order M-618, [1995] O.I.P.C. No. 385 at para. 15.

requests may be vexing or irksome due to the nature of the request, and vexatious is meant to signify something more than that which is annoying or distressing.[7]

[29] In Decision P05-01, former Commissioner Loukidelis cited a non-exhaustive list of factors helpful in considering whether a request is frivolous or vexatious under s. 37(b):

> - Regardless of how it is so, a frivolous or vexatious request is one that is an abuse of the rights conferred under the Act.
>
> …
>
> - The class of "vexatious" requests includes requests made in "bad faith", *i.e.,* for a malicious or oblique motive. Such requests may be made for the purpose of harassing or obstructing the public body.
> - The fact that one or more requests are repetitive may support a finding that a specific request is frivolous or vexatious…To be clear, the fact that access requests are repetitious or systematic in nature cannot…be sufficient to warrant relief…Alongside other factors, however, the fact that repetitious requests have been made may support a finding that a particular request is frivolous or vexatious.[8]

[30] The purpose of the rights conferred by s. 23 is to allow "individuals to know what personal information of theirs an organization has and to ensure that it is accurate and complete."[9] Section 37 is a remedial tool that is used to prevent abuse of this right of access.[10]

[31] It is evident to me that Weyerhaeuser has already provided the respondent's personal information in its control to her, including her employment file and information about her benefits.[11] The exception is the redacted correspondence, although Weyerhaeuser states that all non-privileged information has been provided and the respondent acknowledges that she has already received an unredacted version of this correspondence from the insurance company.[12]

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[7] Order F13-18, [2013] B.C.I.P.C.D. No. 25 at para. 35 citing Authorization (s. 43) 02-02, [2002] B.C.I.P.C.D. No. 57.

[8] [2005] B.C.I.P.C.D. No. 23 at para 12 citing Auth. (s. 43) 02-02, [2002] B.C.I.P.C.D. No. 57 at para. 27.

[9] Decision P05-01, [2005] B.C.I.P.C.D. No. 23 at para. 14.

[10] The court made a similar statement In *Crocker v. British Columbia (Information and Privacy Commissioner)*, [1997] B.C.J. No. 2691 at para. 42, except in relation to s. 43 of FIPPA.

[11] There are multiple letters from Weyerhaeuser replying to the respondent, containing personal information and explanations of the respondent's various benefits. For the pension information, for example, there is a January 25, 2005 letter from the pension administrator enclosing documents containing the respondent's personal information, and a December 23, 2011 letter from Weyerhaeuser confirming that this information remains unchanged. Weyerhaeuser identified 11 different past and present employees who it states have each spent in excess of 20 hours responding to the respondent's various requests. Weyerhaeuser estimates that it has spent in excess of $10,000 in internal time responding to requests by the respondent, plus additional costs to retrieve and return boxes of materials from off-site storage.

[12] The respondent has not received the "return to work certificate", but I accept Weyerhaeuser's submission that it has provided the information in its control. I note that the respondent acknowledges

[32] The respondent asserts she is gathering information to support her claim for benefits, and that she is justified in making repetitious requests because her previous requests have not been answered.[13] I disagree, and find the respondent's assertions are not justified. The respondent previously complained to the OIPC about unanswered requests, and her complaint was considered and rejected by an OIPC investigation. That investigation determined Weyerhaeuser met its statutory duty to respond. In my view, it is vexatious for the respondent to continue to make requests for the same information under PIPA because she does not like the outcome of the investigation.

[33] Moreover, in my view the outstanding requests contained in the October 16, 2012 letter are not genuine requests for access to information under PIPA. Most of the information being requested is outside of the scope of PIPA, and relates to matters at issue in the litigation. Further, when considering the entire letter, I find that its purpose is to pressure Weyerhaeuser to provide the respondent with the benefits she seeks. As with previous correspondence, the October 16, 2012 letter contains a history of events about disputed issues and questions such as, "What do you propose to do to rectify the situation?"[14] The letter was also copied to the CEO of Weyerhaeuser's parent company and its board of directors, which in my view was aimed at pressuring the Weyerhaeuser employees dealing with the respondent's claims for benefits. Taken as a whole, the letter is intended to pressure Weyerhaeuser rather than being a genuine attempt to seek her personal information under PIPA. I find this to be vexatious.

[34] In short, I am satisfied on the basis of all submissions and evidence that the outstanding requests are vexatious. Given these findings, it is unnecessary for me to consider whether the outstanding requests are systematic.

Relief

[35] Weyerhaeuser seeks orders authorizing it to disregard requests for non-personal information and other information that is outside of the scope of PIPA. As I previously noted, Weyerhaeuser has no obligation under ss. 23 or 24 to respond to the respondent's requests for general information or for information that is otherwise outside of the scope of PIPA, so remedial orders on these topics are not warranted.

[36] Weyerhaeuser also seeks an order to disregard any requests for corrections to personal information that have already been addressed by Weyerhaeuser. However, there are currently no requests for correction within the scope of s. 24 of PIPA. Further, Weyerhaeuser has not stated what specific requests the respondent has made that are within the scope of s. 24 or how Weyerhaeuser responded to those requests. Weyerhaeuser is therefore not entitled to the relief it seeks regarding corrections to personal information.

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having previously requested a specific record from Weyerhaeuser about her that she knew did not exist, due to allegations in the litigation (May 2, 2012 letter to Weyerhaeuser).

[13] Respondent's submission at paras. 15 and 48.

[14] Respondent's October 16, 2012 letter at heading #4.

[37] The remaining orders Weyerhaeuser seeks are to authorize it to disregard the current outstanding requests and future requests by the respondent regarding personal information that she has already sought or received.

[38] Normally a public body under FIPPA, or in this case an organization under PIPA, does not require an order authorizing an organization to disregard a request for records previously made and answered by the organization.[15] However, adjudicators in previous cases have authorized organizations to disregard future requests on the same topics if it is reasonable to conclude that the individual will continue to make more requests until their outstanding issues are resolved.[16]

[39] In this case, the respondent's requests relate to her employment and benefit entitlements that have already been provided by Weyerhaeuser. Given the respondent's past actions, which I have found to be vexatious, it is reasonable to conclude that she will continue to make similar requests until she is satisfied these outstanding issues are resolved. In these circumstances, I find that Weyerhaeuser may disregard the outstanding requests, and future requests for any of the respondent's personal information that has been the subject of previous information requests, or has already been provided by Weyerhaeuser to the respondent, under s. 37 of PIPA.

[40] I note that the respondent at some point will receive additional retirement benefits relating to her employment with Weyerhaeuser, or there may be other material changes to her existing benefits. In that event, she may have questions relating to new personal information about her.

[41] Therefore, for clarity, this order does not authorize Weyerhaeuser to disregard requests about this new personal information because the new information would not be tied to the subject matter of a previous information request. However, given the respondent's history of making repetitive requests in succession, in my view it is appropriate to put a further restriction on the respondent's future requests, similar to Decision F11-03 and other orders.[17] I therefore find that Weyerhaeuser is authorized to disregard any access requests in excess of one open access request made by, or on behalf of, the respondent at any one time for a period of three years from the date of this order.

CONCLUSION

For the reasons given above, under s. 52 of PIPA, I order that:

1. Weyerhaeuser is authorized to disregard the respondent's outstanding requests that are within the scope of PIPA.

[15] Decision F11-04, [2011] B.C.I.P.C.D. No. 40 at para. 15; Decision F10-09, [2010] B.C.I.P.C.D. No. 47, at paras. 26 and 27.
[16] Decision F10-09, [2010] B.C.I.P.C.D. No. 47, at par. 41; Order F13-18, 2013 BCIPC No. 25.
[17] Decision F11-03, [2011] B.C.I.P.C.D. No. 39.

2. Weyerhaeuser is authorized to disregard the future requests by or on behalf of the respondent under s. 23 of PIPA for any of the respondent's personal information that has been the subject of previous information requests, or has already been provided by Weyerhaeuser to the respondent.

3. For a period of three years from the date of this order, Weyerhaeuser is authorized to disregard any access requests related to any new personal information requested in excess of one open access request made by, or on behalf of, the respondent at any one time.

December 6, 2013

ORIGINAL SIGNED BY

Ross Alexander, Adjudicator

OIPC File No.: P12-50949