



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

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Order P17-02

## **AMALGAMATED TRANSIT UNION, LOCAL 1724**

Elizabeth Barker  
Senior Adjudicator

May 9, 2017

CanLII Cite: 2017 BCIPC 28  
Quicklaw Cite: [2017] B.C.I.P.C.D. No. 28

**Summary:** An applicant requested that his union provide him with access to all documentation in its control about his grievance and settlement with his employer. The union refused access to any information under s. 30(2) of PIPA (refuse to confirm or deny existence of personal information collected as part of an investigation). The adjudicator found that s. 30(2) did not apply, and the union had not established that it was required or authorized to refuse disclosure under any of the s. 23 exceptions to disclosure. The adjudicator also found the union had not complied with its duty to assist the applicant under s. 28(c). The adjudicator ordered the union to provide the applicant access to his personal information under its control or, if it cannot be reasonably provided, with a reasonable opportunity to examine the information, withholding only information that it is authorized or required to withhold under s. 23 of PIPA.

**Statutes Considered:** *Personal Information Protection Act*, ss. 1 (definitions), 2, 23, 28 and 30.

### **INTRODUCTION**

[1] An applicant requested that his union, the Amalgamated Transit Union, Local 1724 (union) provide him with access to all documentation about his grievance and settlement with his employer.

[2] The union denied his request, stating that it was relying on s. 30(2) of the *Personal Information Protection Act* (PIPA). The applicant requested a review by the Office of the Information & Privacy Commissioner (OIPC). Mediation did not resolve the matter and the applicant requested that it proceed to inquiry. A notice

of inquiry was issued and both parties were informed of the dates for submissions.

[3] The applicant provided a submission in this inquiry, but the union did not. When the OIPC registrar contacted the union to inquire about why it had not provided a submission, the union asked for, and was given, additional time. It subsequently was given a second extension. However, the union never sent an inquiry submission. Instead, its president sent emails to the applicant and the OIPC registrar revisiting what had been discussed when the parties attempted to resolve the matter during mediation.<sup>1</sup> It is not proper for me to consider mediation materials in reaching a decision and issuing an order, so I have not considered the union president's emails.

## ISSUE

[4] The issue is whether the union's application of s. 30(2) of PIPA to deny access to personal information complies with s. 28 of PIPA. Section 51 of PIPA places the burden of proof on the union to prove that the applicant has no right of access to his personal information.

## DISCUSSION

### *The records*

[5] I do not have a copy of the records or information that the applicant requested because the union did not provide them for my review in this inquiry.

### *The legislation*

[6] The purpose of PIPA is to govern the collection, use and disclosure of personal information by organizations in a manner that recognizes both the right of individuals to protect their personal information and the need of organizations to collect, use or disclose personal information for purposes that a reasonable person would consider appropriate in the circumstances.<sup>2</sup> PIPA gives individuals the right to access their own personal information that an organization has about them, and to ask for their personal information to be corrected if they think it is incorrect or incomplete.<sup>3</sup>

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<sup>1</sup> When it was sent the notice of inquiry, the union was referred to the OIPC's *Instructions for Written Inquiries*, which explains that the Commissioner will not consider information about mediation when deciding an inquiry and issuing an order. For clarity, the registrar subsequently emailed the parties to inform them that the inquiry was closed, that the union had not sent a submission, and the file was being assigned to an adjudicator for a decision.

<sup>2</sup> Section 2.

<sup>3</sup> Sections 23, 24, 26 and 27.

*Definition of personal Information – Section 1*

[7] PIPA provides the following definitions:

"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;

"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;

"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.

*Access to personal information – Section 23*

[8] Section 23(1) of PIPA states that an individual has the right to ask for access to his or her own personal information in the control of an organization.

[9] Section 23(3) states that an organization *may* refuse access in the following situations:

- The information is protected by solicitor-client privilege, s. 23(3)(a);
- The disclosure of the information would reveal confidential commercial information that if disclosed, could, in the opinion of a reasonable person, harm the competitive position of the organization, s 23(3)(b);
- The information was collected or disclosed without consent, as allowed under section 12 or 18, for the purposes of an investigation and the investigation and associated proceedings and appeals have not been completed, s. 23(3)(c);
- The information was collected or created by a mediator or arbitrator in the conduct of a mediation or arbitration for which he or she was appointed to act under a collective agreement, an enactment or by a court, s. 23(3)(e); and/or

- The information is in a document that is subject to a solicitor's lien, 22(3)(f).

[10] Section 23(4) states that an organization *must* refuse access in the following situations:

- The disclosure could reasonably be expected to threaten the safety or physical or mental health of an individual other than the individual who made the request, s. 23(4)(a);
- The disclosure can reasonably be expected to cause immediate or grave harm to the safety or to the physical or mental health of the individual who made the request, s. 23(4)(b);
- The disclosure would reveal personal information about another individual, s. 23 (4)(c); and/or
- 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, s.23 (4)(d).

[11] Section 23(5) provides that if an organization is able to sever the above referenced information from a document that contains the applicant's personal information, the applicant is entitled to the balance of the document.

*Duty to assist individual and content of response – sections 28 and 30*

[12] PIPA also provides rules for how an organization must respond to an individual's request. Sections 28 and 30 are relevant in this case.

28 An organization must make a reasonable effort

- (a) to assist each applicant,
- (b) to respond to each applicant as accurately and completely as reasonably possible, and
- (c) unless section 23 (3), (3.1) or (4) applies, to provide each applicant with
  - (i) the requested personal information, or
  - (ii) if the requested personal information cannot be reasonably provided, with a reasonable opportunity to examine the personal information.

30 (1) 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,
- ...

(2) Despite subsection (1) (a), the organization may refuse in a response to confirm or deny the existence of personal information collected as part of an investigation.

### ***Analysis and findings***

[13] The union provides no submissions or evidence. However, I do have its response to the applicant's access request, in which the union's president writes:

As you were an executive Member and a shop steward for the Union, you know that all grievances once filed are the property of the Union. All our investigative notes are private and confidential. As such I have to deny your request for the information as per 30(2) of PIPA."<sup>4</sup>

[14] It is evident from this response that the union is not refusing to confirm or deny the existence of the applicant's personal information, so I find that s. 30(2) does not apply.

[15] The union provides no other information about its decision to refuse the applicant access to his personal information. Specifically, the union does not raise any ground for refusal that is found in s. 23 (3), (3.1) or (4) of PIPA. As a result, I find that the union has not established that it is required or authorized to refuse disclosure under any of the exceptions in s. 23 of PIPA.

[16] Section 28(c) requires that unless s. 23(3), (3.1) or (4) applies, the union must provide the applicant with his requested personal information or, if it cannot be reasonably provided, with a reasonable opportunity to examine it. There is no evidence that the union did either of those things. Thus, I find that it has not established that it met its duty to assist the applicant under s. 28(c).

### **CONCLUSION**

[17] The onus is on the union to establish that it is authorized or required by PIPA to refuse the applicant access to his personal information that is under the union's control. The union's failure to provide any submissions or evidence in this inquiry is fatal to its case, and it has not met its burden of proof. Therefore, I find that the union is not authorized or required to refuse the applicant access to his personal information under PIPA.

[18] In conclusion, pursuant to ss. 52(2)(a)(i) and 52(3)(a) of PIPA, I require the union to provide the applicant access to his personal information under its control or, if it cannot be reasonably provided, with a reasonable opportunity to examine the information, withholding only information that it is authorized

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<sup>4</sup> November 19, 2015 response to request.

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or required to withhold under s. 23 of PIPA. It must comply with this order by June 21, 2017. The union must concurrently copy the OIPC's registrar of inquiries on its cover letter to the applicant, together with a copy of the records.

May 9, 2017

**ORIGINAL SIGNED BY**

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Elizabeth Barker, Senior Adjudicator

OIPC File No.: P15-64069