



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
for British Columbia

Protecting privacy. Promoting transparency.

Order P19-01

**LITTLE QUALICUM RIVER VILLAGE STRATA CORPORATION
(STRATA PLAN VIS 4673)**

Elizabeth Barker
Senior Adjudicator

January 24, 2019

CanLII Cite: 2019 BCIPC 03
Quicklaw Cite: [2019] B.C.I.P.C.D. No. 03

Summary: The applicant made a request to the strata corporation for copies of correspondence complaining about her dog. The strata corporation refused to disclose the parts of the correspondence that identified other individuals. The adjudicator found that s. 23 of the *Personal Information Protection Act* (PIPA) did not apply because the applicant's request was not for access to her own personal information under PIPA. The adjudicator found that the applicant's request was made pursuant to s. 36(1)(a) of the *Strata Property Act*. The adjudicator had no jurisdiction to decide the applicant's complaint about the strata corporation's failure to comply with its obligations under the *Strata Property Act*.

Statutes Considered: *Personal Information Protection Act*, ss. 1 (definition of "proceeding"), 18(1)(o), 23(1), 23(4). *Strata Property Act*, ss. 35(2)(k) and 36(1)(a).

INTRODUCTION

[1] This case is about how the provisions that address disclosure of personal information in the *Personal Information Protection Act* (PIPA) interact with a strata corporation's obligations under the *Strata Property Act* (SPA).

[2] The applicant owns a lot in a bare land strata corporation called Little Qualicum River Village - Strata Plan VIS 4673 (organization).¹ Her home is on a forested lot which ensures privacy and she rarely hears or sees her

¹ There was no dispute that Strata Plan VIS 4673 meets the definition of an "organization" in PIPA.

neighbours. The organization informed her in writing that it had received complaints about her dog roaming off leash on common property and it issued her a fine for contravening the related strata bylaw. The applicant made a written request under the SPA for full copies of the complaints. Specifically she said:

Further to the complaint letters of May and October 2017 you issued concerning our dog...we ask that you provide us with copies of these *alleged* complaints, indicating the name and address of the accuser, in accordance with SPA Div 2, s. 36, via return mail.²

[3] The organization gave her severed copies of the two complaints. The first complaint is a brief letter addressed to the strata council, and the organization severed the name of the complainant. The second complaint is a two sentence email, and the organization severed the complainant's name and email address as well as the names and email addresses of the email recipients. The organization told the applicant that its decision to sever information from the complaints was pursuant to its personal information protection policy, which was designed to comply with PIPA.³

[4] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the organization's decision to withhold information from the complaints. The organization informed the OIPC that it was withholding the information under ss. 23(4)(c) and 23(4)(d) of PIPA because it was personal information of other individuals. Mediation failed to resolve the matter and the applicant asked that it proceed to inquiry.

ISSUE

[5] The issue as stated in the fact report and notice of inquiry is whether the organization is required to refuse to disclose the severed information under ss. 23(4)(c) and (d) of PIPA.

DISCUSSION

Parties' submissions

[6] The parties' submissions are brief, so I will summarize them at the outset. The applicant submits that the withheld information must be disclosed pursuant to ss. 35(2)(k) and 36(1)(a) of the SPA and s. 18(1)(o) of PIPA.⁴ The applicant explains that she wants access to the identity of the complainants because she believes that council is issuing bogus complaint letters in order to improperly levy fines against strata lot owners. The applicant also complains about the organization failing to comply with the SPA's rules regarding photocopying and

² Applicant's December 4, 2017 request.

³ Organization's December 13, 2017 letter.

⁴ Applicant's submission p. 1.

she asks for an order that the organization revise the fee it charged her.⁵ She also asks that the Commissioner order the organization to amend its *Complainant Confidentiality Policy* to say that s. 36(1)(a) of the SPA and s. 18(1)(o) of PIPA require it to disclose complaint correspondence.

[7] The organization explains that its practice is to not disclose the identity of complainants. It says:

This is an issue that has caused our strata council great concern. Residents reporting bylaw infractions clearly expect confidentiality and protection from reprisal. I'm sure there would be an immediately [sic] cessation of complaints if privacy was ever breached. The council acts as an impersonal body to administer complaints and any potential penalties. I cannot emphasize enough the potential for personal, malicious reprisal if authors of bylaw complaint letters were stripped of their privacy. We have certainly done due diligence in obtaining guidance from two OIPC professionals over a 2 year period and have created our policies based on that advice.⁶

Personal information

[8] 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.⁷

[9] Personal information is defined in PIPA as follows:

"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;

⁵ The applicant was charged \$8.50 and believes she was overcharged.

⁶ Organization's initial submission.

⁷ Section 2 of PIPA.

"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.⁸

[10] In this case, the information the organization is refusing to disclose is the names and email addresses of several individuals, so it is about those individuals and is their personal information. It is not employee personal information, contact information or work product information. The withheld information is not about the applicant, so it is not her personal information.

[11] PIPA gives an individual a right to access their own personal information under the control of an organization. However, PIPA does not grant any rights regarding another individual's personal information.

[12] Section s. 23 of PIPA explains how an organization must respond to an individual's request regarding the individual's own personal information. Upon request of an individual, an organization must provide the individual with their own personal information under the control of the organization (s. 23(1)(a)). When providing the individual with their own personal information, the organization must not disclose personal information about another individual (s. 23(4)(c)) or 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)).

Applicant's request

[13] The applicant's request for the complaint correspondence was specifically made pursuant to s. 36(1)(a) of the SPA. The SPA contains provisions that say that certain records must be retained by a strata corporation and made available to its members. The relevant provisions in this case are ss. 35(2)(k) and 36(1)(a), which state:

Strata corporation records

35 (2) The strata corporation must retain copies of all of the following:

...

(k) correspondence sent or received by the strata corporation and council;

Access to records

36 (1) On receiving a request, the strata corporation must make the records and documents referred to in section 35 available for inspection by, and provide copies of them to,

⁸ PIPA, s. 1.

(a) an owner,

...

[14] The applicant's allegation in this inquiry is that the organization is not complying with its obligations under ss. 35(2)(k) and 36(1)(a) of the SPA because it is refusing her unsevered access to the correspondence. In my view, the applicant's request to the organization was not a request under PIPA for access to her own personal information. Furthermore, the information she seeks is the personal information of other individuals. For that reason, s. 23 of PIPPA does not apply and the issue as stated at the outset of this inquiry is not something I can decide.

[15] Whether the organization's decision to only partially disclose the complaint correspondence to the applicant contravenes ss. 35(2)(k) and 36(1)(a) of the SPA is outside the Commissioner's jurisdiction to decide. The Commissioner has no statutory authority or oversight regarding the SPA. Any allegation that the organization is not complying with its disclosure obligations under s. 36(1)(a) of the SPA, or its obligations regarding photocopying fees, should be addressed through the dispute resolution mechanisms available under the SPA and the *Civil Resolution Tribunal Act*.

[16] By way of background, s. 189.1 of the SPA says that a strata corporation, owner or tenant may make a request under the *Civil Resolution Tribunal Act* asking the Civil Resolution Tribunal to resolve a dispute concerning any strata property matter over which the tribunal has jurisdiction. The *Civil Resolution Tribunal Act* says that the Civil Resolution Tribunal's jurisdiction includes claims concerning the interpretation or application of the SPA or a regulation, bylaw or rule under the SPA and decisions of the strata corporation, including the council, in relation to an owner or tenant.⁹ In fact, the applicant cites three Civil Resolution Tribunal decisions where the Civil Resolution Tribunal decided disputes regarding photocopying fees as well as the application of ss. 35(2)(k) and 36(1)(a) of the SPA and s. 18(1)(o) of PIPA.¹⁰

[17] Furthermore, the remedies the applicant seeks in this inquiry are also outside the Commissioner's powers under PIPA. The applicant wants access to other people's personal information. She also asks the Commissioner to order the organization to amend its *Complainant Confidentiality Policy* to say that s. 36(1)(a) of the SPA and s. 18(1)(o) of PIPA require it to disclose complaint correspondence. PIPA only gives an individual the right to access their own information, and contrary to what the applicant suggests, s. 18(1)(o) of PIPA does not require the organization disclose the complainants' personal information to her. Section 18(1)(o) provides that an organization *may* disclose an

⁹ SBC 2012, c. 25, s. 3.6.

¹⁰ *Betuzzi v. The Owners, Strata Plan K350*, 2017 BCCRT 6 (CanLII); *Mason v. The Owners, Strata Plan BCS 4338*, 2017 BCCRT 47 (CanLII), and *L.S. v. The Owners, Strata Plan ABC XXX*, 2018 BCCRT 376.

individual's personal information without their consent if the disclosure is required or authorized by law. There are simply no provisions in PIPA, including the Commissioner's order making powers under s. 52, which can compel an organization to disclose an individual's personal information to another individual.

[18] I would like to take this opportunity to also comment on the organization's *Complainant Confidentiality Policy* because it contains inaccurate information about PIPA. It suggests that PIPA requires the organization to remove personal information from complaint letters that it is required to provide under s. 36(1)(a) of the SPA. As explained above, this is not what PIPA says and I recommend the organization amend its policy.

CONCLUSION

[19] For the reasons provided above, I find that s. 23 of PIPA does not apply in this case. I also find that the Commissioner has no jurisdiction to decide if the organization failed to comply with its obligations under the SPA.

January 24, 2019

ORIGINAL SIGNED BY

Elizabeth Barker, Senior Adjudicator

OIPC File No.: P18-73857