



Order P21-02

THE OWNERS, STRATA PLAN

Celia Francis
Adjudicator

February 25, 2021

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Summary: The complainants alleged that the council of their strata plan (organization) improperly disclosed their personal information to other strata owners. The adjudicator found that the *Personal Information Protection Act* did not authorize the organization's disclosure of the complainants' personal information.

Statutes Considered: *Personal Information Protection Act*, ss. 6, 7, 8, 10(1), 17, 18.

INTRODUCTION

[1] This order arises out of four complaints under the *Personal Information Protection Act* (PIPA) to the Office of the Information and Privacy Commissioner (OIPC) that two strata unit owners (the complainants) made about the council of their strata plan (the organization).¹ All of the complaints are about the strata council's alleged improper disclosure of the complainants' personal information to other strata unit owners from June 2018 to June 2019.

ISSUE

[2] The notice and fact report state that the issue to be decided in this inquiry is whether PIPA authorized the organization's use and disclosure of the complainants' personal information. However, the complaints themselves concerned only disclosure, as did the examples the complainants included with their complaints to the OIPC. Moreover, the fact report does not say that "use" was added as an issue during mediation. In addition, the parties did not address

¹ I have not named the strata plan as this would enable identification of the complainants.

the organization's use of the complainants' personal information in their submissions. I will, therefore, consider only disclosure in this order.

[3] Section 51 of PIPA, which sets out the burden of proof in an inquiry, is silent as to who has the burden regarding the issue set out above. It is, therefore, in the interests of the parties to provide argument and evidence to support their positions.²

DISCUSSION

Complainants' position

[4] The complainants have made a series of human rights, OIPC and Civil Resolution Tribunal (CRT) complaints against the organization. They said that a named member of the strata council had, on many occasions, disclosed their personal information about these complaints to other strata owners, in order to make trouble for the complainants.

[5] The complainants said that these disclosures occurred when the strata council member forwarded their emails and letters to the strata owners or when the strata council member included their personal information in strata meeting agenda packages that it sent to strata owners. They accept that a strata council may inform strata owners that there is a complaint against the strata but said this does not include the names of the complainants.³

[6] The complainants acknowledged that the organization has since appointed a privacy officer who told the strata owners that the organization's disclosures of the complainants' personal information were inappropriate. The complainants said that the privacy officer has developed a privacy policy for the organization which they anticipate will result in improvements.

The organization's position

[7] The previous strata council for the organization took the position that it was appropriate for the organization to inform the strata owners of the complainants' complaints, as the complaints were not just against the strata council but against the strata owners.⁴ It did not explain its authority under PIPA to disclose the complainants' personal information.

² Order P19-03, 2019 BCIPC 42 (CanLII), para. 9.

³ Complaint of January 24, 2019 about a disclosure the strata council member made in June 2018 to the other strata owners.

⁴ Letter of June 14, 2019 to the OIPC; para. 9, fact report.

[8] The organization's new privacy officer said she could not speak on behalf of the previous strata council as to what it had done. However, she said that she had discussed the complaints with the complainants and, on behalf of the organization, had apologized to them for the breach of their privacy. The privacy officer confirmed that she had developed a privacy policy, in consultation with the OIPC, and had circulated it to the strata owners. She added that the new strata council takes privacy seriously, reviews documents before forwarding them and will do its best to protect the privacy of the strata owners.

Did PIPA authorize the organization's disclosures?

[9] PIPA's purpose 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 and disclose personal information for purposes that a reasonable person would consider appropriate in the circumstances."⁵ The organization in this case (the strata plan and its council) is covered by PIPA and must ensure that it discloses personal information only in accordance with PIPA.

[10] I will first consider if the information in question is personal information. I will then consider whether PIPA authorized disclosure.

Is it personal information?

[11] PIPA says that "personal information" means information about an identifiable individual.⁶ It includes "employee personal information"⁷ but does not include "contact information"⁸ or "work product information".⁹

[12] The complainants attached copies of emails, strata council agendas and medical forms to their complaints to the OIPC to illustrate the personal information they say the organization disclosed improperly. The information in question comprised the following:

⁵ PIPA, s. 2.

⁶ PIPA, s. 1.

⁷ "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.

⁸ "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.

⁹ "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.

- medical information about one of the complainants (a doctor’s note about an incident in the complainant’s home and an emergency room form concerning the same incident which contained his medical information, his personal health number, address and birthdate) which the organization included in a strata meeting agenda package it sent to the strata owners; it appears that the disclosure occurred in connection with the complainants’ human rights complaint against the organization, although this is not clear;
- details of, and updates on, the complainants’ BC Human Rights, OIPC and CRT complaints or disputes, in emails updating the strata owners and as part of strata meeting agenda packages the organization sent to the owners; and
- details of the complainants’ complaint to the organization about a visitor parking spot in an email which the organization forwarded to other strata owners; the complainants said this complaint was meant only for the strata council.

[13] The complainants are named in the various communications and the complaint information is about them, in their personal capacity as strata owners. I find that the disclosed information is “personal information”.

[14] I also find the information is not “work product information”, “employee personal information” or “contact information”, as the complainants are not employees of the strata and it is not information about them acting in a business capacity.

Consent required for disclosure

[15] An organization may not disclose personal information unless:

- it has the consent of the individual concerned;
- PIPA deems the individual to have consented to disclosure; or
- PIPA allows disclosure without consent.¹⁰

Did the complainants consent to disclosure?

[16] An individual has not given consent to an organization unless:

- the organization has, under s. 10(1), disclosed to the individual, on or before collecting her/his personal information, the purposes for the collection; and
- the individual has consented in accordance with PIPA.¹¹

¹⁰ PIPA, s. 6.

¹¹ PIPA, s. 7.

[17] The organization's submission did not address the issue of consent.

[18] There is no evidence that the organization notified the complainants of the purpose for the collection of their personal information under s. 10(1). There is also no evidence that the complainants expressly consented to the disclosure of their personal information.

Was there deemed consent?

[19] PIPA also provides for implicit consent. An individual is deemed to have consented to disclosure of her or his personal information in these circumstances:

- where the individual voluntarily provides the personal information to the organization for a purpose that, at that time, would be considered obvious to a reasonable person;
- for the purpose of a beneficiary's coverage under an insurance, pension, benefit or similar plan when the individual was not the applicant;
- for specified purposes, if the organization meets certain conditions, which include giving the individual notice of the organization's intention to disclose the personal information and giving him or her an opportunity to decline within a reasonable time.¹²

[20] There is no evidence that any of these circumstances was present in this case. For example, when the complainants provided their personal information to the organization, it would not have been obvious to a reasonable person that the organization would ever have any purpose for disclosing it to other strata owners. The complainants' personal information was also not collected in context of their being beneficiaries of an insurance or other plan. Nor did the organization give the complainants notice of its intention to disclose their personal information and give them a chance to decline the disclosure. Therefore, I find that there was no deemed consent under s. 8.

Was the organization authorized to disclose without consent?

[21] Several sections of PIPA allow an organization to disclose personal information without consent, of which only s. 18 is potentially relevant in this case.¹³ Section 18 allows an organization to disclose personal information

¹² PIPA, s. 8.

¹³ The other sections deal with disclosure for business transactions, research, statistical, archival or historical purposes.

without consent, for example, to collect a debt¹⁴ or to a law enforcement agency to assist in an investigation.¹⁵

[22] I considered whether s. 18(1)(o) (disclosure is required or authorized by law) applies. This is because s. 36 of the *Strata Property Act* (SPA) authorizes strata corporations to disclose, on request, records listed in s. 35 of the SPA (e.g., a list of owners and their addresses; correspondence sent to or received by the strata corporation or its council). However, there is no evidence of any request for disclosure of the complainants' personal information. Rather, the organization appears to have made the disclosures on its own initiative.

[23] I find that s. 18(1)(o) did not authorize the organization to disclose the complainants' personal information. In my view, none of the other circumstances listed in s. 18(1) authorized the organization to disclose the complainants' personal information either.

Limitations on disclosure

[24] In addition to the requirements related to consent, s. 17 of PIPA says that an organization may only disclose personal information for purposes that a reasonable person would consider appropriate in the circumstances.

[25] It is not clear, and the organization did not explain, how a reasonable person would consider it appropriate for the organization to disclose the personal information at issue to the other strata owners. I accept that it might be appropriate for the organization to inform the strata owners that there have been claims or complaints against the organization, since such issues might have financial or legal implications for the strata corporation. I do not, however, see how disclosure of the complainants' names and the details of their complaints (in particular, the medical information) would be relevant or appropriate for the other strata owners to know. I find that the organization has not established the disclosure complied with the requirements of s. 17.

CONCLUSION

[26] For the reasons given above, I find that PIPA did not authorize the organization to disclose the complainants' personal information.

[27] Section 52(3) says that I may make an order following an inquiry into a complaint such as this. I could, for example, order the organization to do its duty to appoint a privacy officer and develop a privacy policy. I could also order it to stop disclosing the complainants' personal information. However, the

¹⁴ PIPA, s. 18(1)(g).

¹⁵ PIPA, s. 18(1)(j).

organization has already done those things without being ordered to do so.
I decline, therefore, to make any order.

February 25, 2021

ORIGINAL SIGNED BY

Celia Francis, Adjudicator

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