



Order P24-13

**GLENN ISSLER**

Elizabeth Vranjkovic  
Adjudicator

December 18, 2024

CanLII Cite: 2024 BCIPC 110  
Quicklaw Cite: [2024] B.C.I.P.C.D. No. 110

**Summary:** Two individuals (complainants) requested access to certain documents from their mortgage broker under the *Personal Information Protection Act* (PIPA). The complainants alleged that the mortgage broker did not provide all of their personal information. The adjudicator found that the mortgage broker did not make a reasonable effort to respond to the complainants as accurately and completely as reasonably possible under s. 28(b) or make a reasonable effort to provide the requested personal information under s. 28(c). The adjudicator ordered the mortgage broker to perform his duties under ss. 28(b) and (c).

**Statutes Considered:** *Personal Information Protection Act*, [SBC 2003], c. 63, ss. 28(a), 28(b), 28(c), 29(1), 30(1), 52(3)(a), 52(4) and 53(1).

## INTRODUCTION

[1] This inquiry is about whether a mortgage broker performed his duties pursuant to s. 28(b) and (c) of the *Personal Information Protection Act* (PIPA).

[2] Two individuals (complainants) requested access to certain documents from their mortgage broker, who provided them with some but not all of the requested documents.<sup>1</sup> The complainants complained to the Office of the Information and Privacy Commissioner (OIPC) that the mortgage broker did not provide them with all of their personal information.

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<sup>1</sup> The OIPC's Notice of Written Inquiry (Notice) identifies the organization as "Jam Mortgages and/or Glenn Issler." I find that the organization is Glenn Issler, the mortgage broker. The complainants made their request directly to the mortgage broker, the mortgage broker responded to their request, and the mortgage broker refers to himself as the organization in his response submission.

[3] During mediation by the OIPC, the complainants confirmed they seek all the information to which they are entitled under s. 23(1) (access to personal information) of PIPA.<sup>2</sup> The OIPC's mediation process did not resolve the complaint, and it proceeded to inquiry.

## **PRELIMINARY ISSUES**

### ***Should I cancel the inquiry?***

[4] The mortgage broker says that the inquiry should be dismissed because the complainants are using PIPA to gather information for the purpose of litigation.<sup>3</sup>

[5] Section 50(1) gives the Commissioner or their delegate the discretion to choose whether to hold an inquiry. The Commissioner or their delegate may refuse to conduct an inquiry on a number of grounds.

[6] Here, the mortgage broker has only provided a suspicion about the complainants' motives. He has not explained why this suspicion warrants cancelling the inquiry and I do not think that it does.

[7] Additionally, the mortgage broker did not explain why he is only asking that the inquiry be cancelled at this late stage. In the absence of an explanation, I do not think an inquiry submission is the appropriate place to request to cancel an inquiry.

[8] For these reasons, I decline to cancel the inquiry.

### ***Should I exclude some submissions from the inquiry?***

[9] The complainants say that I should disregard the mortgage broker's submissions where he refers to portions of communications without providing the entirety of those communications.<sup>4</sup>

[10] Section 50(1) provides the Commissioner or their delegate the authority to decide all matters of fact and law during an inquiry, which would include matters regarding the admissibility of evidence.<sup>5</sup> As an administrative tribunal, the OIPC is generally not bound by the formal rules of evidence that govern judicial

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<sup>2</sup> From this point forward, when I refer to sections of an enactment I am referring to sections of PIPA.

<sup>3</sup> Organization's response submission at para 13.

<sup>4</sup> Complainants' reply submission at para 4.

<sup>5</sup> See also Order P24-07, 2024 BCIPC 43 at paras 11-12.

proceedings.<sup>6</sup>

[11] The Commissioner or their delegate has the authority and discretion to admit evidence that they consider relevant or appropriate for the purposes of deciding the matters at issue in an inquiry, whether or not that evidence would be accepted in a court of law.<sup>7</sup>

[12] With one exception which I will discuss below, I am not persuaded that there is a justifiable reason to exclude portions of the mortgage broker's submission from this inquiry. The mortgage broker provided excerpts of communications to support his position at the inquiry. These excerpts are relevant to assessing the mortgage broker's position. In addition, I find that there is no unfairness to the complainants in admitting this information because they had an opportunity to respond to it in their reply submission. For these reasons, I find that it is appropriate to admit the excerpts into evidence. The weight and attention I give to this information is a separate matter from its admissibility and is incorporated into my analysis and findings throughout this order.

[13] However, part of the mortgage broker's submission includes excerpts of communications with the OIPC investigator during mediation.<sup>8</sup> Mediation takes place on a without prejudice basis, which means that the parties understand that mediation material will not be used during any of the subsequent proceedings including this inquiry. It would be inappropriate for me to consider information from mediation without the consent of the opposing party. As a result, I have not considered this information when making my decision.

## ISSUES

[14] In this inquiry, I must decide the following:

1. Did the mortgage broker make a reasonable effort to respond to the complainants as accurately and completely as reasonably possible (s. 28(b))?
2. Did the mortgage broker make a reasonable effort to provide the requested personal information or a reasonable opportunity to examine the personal information (s. 28(c))?
3. If the answer is no to either of the above questions, what is the appropriate remedy?

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<sup>6</sup> *Cambie Hotel (Nanaimo) Ltd v British Columbia (General Manager, Liquor Control and Licensing Branch)*, 2006 BCCA 119 at paras 28-36.

<sup>7</sup> *British Columbia Lottery Corporation v Skelton*, 2013 BCSC 12 at para 64.

<sup>8</sup> Organization's response submission at para 5-6.

[15] PIPA does not expressly state who has the burden of proof in relation to s. 28. In a previous order, I found that the organization has the burden of proof because it is in the best position to prove that it performed its duties under s. 28.<sup>9</sup> I adopt the same approach here.

## DISCUSSION

### ***Background***<sup>10</sup>

[16] In 2022, the mortgage broker obtained a mortgage for the complainants with TD Bank. On September 26, 2022, one of the complainants e-mailed the mortgage broker and requested access to the following documents related to their mortgage file:

Correspondence (inc. e-mails and phone notes) with TD in relation to our mortgage;

A complete copy of your/our mortgage file with Jam Mortgages; and

Any other document related to our mortgage file which is in your possession.

[17] On October 24, 2022, the mortgage broker disclosed some documents, which he describes as follows:

- BC Form 10 Conflict of Interest Disclosure Statement
- BC Annual Percentage Rate Disclosure
- TD Canada Trust – Signed Commitment
- TD Canada Trust Appropriate Product Assessment

[18] On the same day, the complainants informed the mortgage broker that those documents did not fulfill their request.

[19] In December 2022, the complainants filed a complaint with the OIPC. During mediation, the complainants confirmed that they seek all of the information they are entitled to under s. 23(1).

[20] On November 30, 2023, the mortgage broker provided 13 documents to the complainants, which he describes as follows:

- [Complainant 1] pay
- [Complainant 1] LOE

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<sup>9</sup> Order P23-10, 2023 BCIPC 86 at paras 8-11.

<sup>10</sup> The information in this section is from the investigator's fact report, the complaint, the complainants' initial submission at para 2, and the organization's response submission at para 4.

- [Complainant 1] Employment Report
- T4 2021
- 2020 Notice of reassessment
- [Complainant 2] pay
- [Complainant 2] T4
- [Complainant 2]
- [Complainant 1] March 2022 RRSP
- [Complainant 2] March 2022 RRSP
- TD Deposit
- Origin Credit Consent 2021
- [Complainant 1 and Complainant 2] BCDL<sup>11</sup>

[21] The complainants had provided these 13 documents (the Uploaded Documents) to the mortgage broker for the purposes of obtaining their mortgage.

### ***Legislative scheme***

[22] The purpose of PIPA is to govern the collection, use and disclosure of personal information by organizations.<sup>12</sup> Personal information is information about an identifiable individual and includes employee personal information but does not include contact information or work product information.<sup>13</sup>

[23] Section 23(1) gives individuals the right to access their personal information under the control of an organization and the right to know how the organization has used and disclosed that information. It provides as follows:

23(1) Subject to subsections (2) to (5), on request of an individual, an organization must provide the individual with the following:

- (a) the individual's personal information under the control of an organization;
- (b) information about the ways in which the personal information referred to in paragraph (a) has been and is being used by the organization;
- (c) the names of the individuals and organizations to whom the personal information referred to in paragraph (a) has been disclosed by the organization.

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<sup>11</sup> I have anonymized the descriptions and edited them for ease of reading (for example, removing underscores and “.pdf” from the descriptions).

<sup>12</sup> Section 2.

<sup>13</sup> Section 1.

[24] The right of access is subject to the exceptions to disclosure set out in ss. 23(3), (3.1) and (4).

### **Section 28**

[25] Section 28 sets out an organization's duty to assist applicants. It says as follows:

#### **Duty to assist individual**

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.

#### ***Are the complainants applicants?***

[26] Section 28 sets out an organization's duties in relation to applicants. Thus, the first issue I must decide is whether the complainants are applicants.

[27] An applicant is an individual who makes a written request for access to their personal information that provides sufficient detail to enable the organization, with a reasonable effort, to identify the individual and personal information being sought.<sup>14</sup>

[28] I am satisfied that the complainant who made the request was acting on behalf of himself and the other complainant. I find that the request is for the complainants' personal information because it is for documents about professional services provided to the complainants, which I am satisfied would contain information about the complainants as identifiable individuals.<sup>15</sup> I am also

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<sup>14</sup> Sections 25 and 27.

<sup>15</sup> It is possible, in my view, that the complainants' request may capture information that is beyond the scope of the s. 23(1)(a) access right (that is, information that is not the personal information of either of the complainants). However, I can see from the investigator's fact report that the complainants only seek access to the information to which they are entitled under s. 23(1)(a).

satisfied that the request includes sufficient detail to identify the complainants and the personal information being sought.

[29] As a result, I find that the complainants are “applicants,” and therefore, that the mortgage broker must comply with s. 28. Because of the interaction between ss. 28(b) and (c), I will first consider whether the mortgage broker performed his duty under s. 28(c) before considering whether he performed his duty under s. 28(b).<sup>16</sup>

***Duty to make a reasonable effort to provide the requested personal information, s. 28(c)***

[30] Section 28(c) requires an organization to make a reasonable effort to provide an applicant with the requested personal information or a reasonable opportunity to examine that information, unless the exceptions to disclosure in s. 23(3), (3.1) or (4) apply.

[31] The mortgage broker says that there are no other documents to be disclosed. The mortgage broker also says that he had no communications with any third parties about the complainants’ personal income, identification or employment documents.<sup>17</sup>

[32] The complainants say that the mortgage broker did not say he disclosed all of their personal information in his possession.<sup>18</sup> The complainants also say that the mortgage broker has other documents containing their personal information since he obtained a mortgage for them.<sup>19</sup>

[33] First, I find that the mortgage broker did not make a reasonable effort to provide the complainants with the Uploaded Documents. Section 29(1) says that an organization must respond to an applicant not later than 30 days after receiving the applicant’s request or the end of an extended time period if the time period is extended under s. 31.<sup>20</sup> Although the mortgage broker eventually disclosed the Uploaded Documents, he did not do so for over a year following the complainants’ request for their personal information, contrary to the requirements of s. 29(1).

[34] I also find that the mortgage broker refused access to some of the requested personal information by refusing access to emails and text messages between the mortgage broker and one or both of the complainants (the

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<sup>16</sup> Section 28(c) asks whether an organization provided all the requested personal information. If the organization did not provide all of the requested personal information, the response under s. 28(b) must meet the requirements of s. 30(1).

<sup>17</sup> Organization’s response submission at para 10.

<sup>18</sup> Complainants’ reply submission at para 7.

<sup>19</sup> Complainants’ reply submission at para 6.

<sup>20</sup> There is no evidence here that the s. 29(1) time period was extended.

Complainant Communications). I can see that the Complainant Communications exist because the mortgage broker provided excerpts of them in his inquiry submission.<sup>21</sup> The mortgage broker has described all of the documents he disclosed, and none of those documents are emails or text messages with the complainants.

[35] Additionally, I find that the mortgage broker did not provide the complainants with the requested information about the ways in which their personal information has been or is being used as required by s. 23(1)(b) or the names of the individuals and organizations to whom their personal information has been disclosed as required by s. 23(1)(c).

[36] Finally, there is also no evidence before me that the mortgage broker provided the complainants with a reasonable opportunity to examine any of the personal information described above or told the complainants that the exceptions to disclosure in s. 23(3), (3.1) or (3.4) apply to any of that information.

[37] For these reasons, I find that the mortgage broker did not fulfill his duty under s. 28(c) to make a reasonable effort to provide the complainants with the requested personal information or a reasonable opportunity to examine that information.

***Duty to respond as accurately and completely as reasonably possible, s. 28(b)***

[38] Section 28(b) requires an organization to make a reasonable effort to respond to an applicant as accurately and completely as reasonably possible. The requirements of s. 28(b) are informed by s. 30(1), which imposes requirements on an organization who refuses access to all or part of an applicant's request for 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,
- (b) the name, position title, business address and business telephone number of an officer or employee of the organization who can answer the applicant's questions about the refusal, and
- (c) that the applicant may ask for a review under section 47 within 30 days of being notified of the refusal.

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<sup>21</sup> Organization's response submission at paras 2-3 and 6.



[39] The parties made limited submissions relevant to s. 28(b). The complainants say that the mortgage broker did not provide any reasons for not disclosing all of their personal information.<sup>22</sup> The mortgage broker says that he failed to tell the complainants that he provided a “complete record” of their uploaded personal documents.<sup>23</sup>

[40] I found above that the mortgage broker refused access to the Uploaded Documents, the Complainants Communications, information about the ways in which their personal information has been or is being used, and the names of the individuals and organizations to whom their personal information has been disclosed. As a result, his response to the complainants’ request for personal information was required to comply with s. 30(1).

[41] The relevant communications between the mortgage broker and the complainants about the access request are reproduced below. On October 21, 2022, the mortgage broker responded as follows:

... Thank you for your patience as I gathered the information that I needed to assist you with.

Upon discovery from my E&O provider, BCFSA – regulator, TD Broker Services (non TD branch)

I have been advised by TD Broker Services, as they are a 3<sup>rd</sup> party vendor and they will proceed to get TD Legal involved as they are not able to provide any further documentation. ...

[42] On October 24, 2022, the mortgage broker disclosed some documents and responded as follows:

...I have attached my file below. Two compliance (BC Form 10 and Business Practices and Consumer Protection Act – Annual Percentage Rate Disclosure) and your mortgage commitment as requested.

[43] After the complainants informed the mortgage broker that those documents did not fulfill their request, the mortgage broker responded as follows:

... I have also spoken to my broker owner

As a brokerage, we may have to take a step back at this point, as I/we are not able to provide further internal communications to you at this time. TD contact phone numbers are listed on the last 2 pages of the commitment letter.

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<sup>22</sup> Complainants’ initial submission at para 7.

<sup>23</sup> Organization’s response submission at para 7.

He is willing to have further discussion direct with you, to advise the standpoint of our brokerage in support of our clients and lender partners.

...

[44] These emails clearly do not meet the requirements of s. 30(1). The mortgage broker does not identify the provision(s) of PIPA on which the refusal was based, provide contact information of an officer of employee who could answer questions about the refusal, or inform the complainants of their right to ask for a review under s. 47. There is also no evidence before me that the mortgage broker provided any other response that meets the requirements of s. 30(1).

[45] For these reasons, I find that the mortgage broker did not perform his duty under s. 28(b) to make a reasonable effort to respond to the complainants as accurately and completely as reasonably possible.

### ***What is the appropriate remedy?***

[46] The complainants request that the OIPC “consider levying appropriate penalties” against the mortgage broker under s. 56.

[47] Section 56 creates offences that only the appropriate authority can prosecute. The Attorney General is responsible for prosecuting offences under s. 56 of PIPA and the courts are responsible for deciding those matters. I have no authority to levy a penalty against the organization under s. 56, so I will not consider this request any further.

[48] The usual remedy in cases involving s. 28 is to order the organization to fulfil its duties under s. 28 of PIPA by a particular date.<sup>24</sup> In my view, that is the appropriate remedy in these circumstances.

## **CONCLUSION**

[49] For the reasons given above, I make the following orders under s. 52(3)(a) of PIPA:

1. I require Glenn Issler to perform his duty under s. 28(b) to make a reasonable effort to respond openly, accurately and completely to the complainants’ request. In order to perform his duty under s. 28(b), if Glenn Issler refuses access to all or part of the personal information requested by the complainants, Glenn Issler’s response must include the information set out in s. 30(1)(a), (b) and (c).

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<sup>24</sup> For example, Order P23-10, 2023 BCIPC 86.

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2. I require Glenn Issler to perform his duty under s. 28(c) to make a reasonable effort to provide the complainants access to their personal information under his control, or, if it cannot be reasonably provided, with a reasonable opportunity to examine that personal information, withholding only the complainants' personal information that Glenn Issler is authorized or required to withhold under s. 23(3), (3.1) or (4).
  3. As a condition under s. 52(4), I require Glenn Issler to provide the OIPC registrar of inquiries with written evidence of his compliance with the above orders.

Under s. 53(1) of PIPA, Glenn Issler is required to comply with these orders by February 3, 2025.

December 18, 2024

**ORIGINAL SIGNED BY**

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Elizabeth Vranjkovic, Adjudicator

OIPC File No.: P22-91836