



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
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Order P18-01

COMPASS GROUP CANADA LTD.

Elizabeth Barker
Senior Adjudicator

January 23, 2018

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Summary: Several individuals requested records related to their applications to work for Compass Group Ltd. Compass refused to disclose information under ss. 23(3)(b), 23(4)(c) and s. 23(4)(d) of PIPA. The adjudicator found that ss. 23(4)(c) and s. 23(4)(d) applied to some of the information but s. 23(3)(b) did not apply at all. The adjudicator determined that Compass is able to remove the information to which ss. 23(4)(c) and (d) apply and provide the applicants with access to their own personal information.

Statutes Considered: *Personal Information Protection Act*, ss. 1 (definition of "personal information"), 2, 23(3)(b), 23(4)(c), 23(4)(d) and 23(5).

Authorities Considered: BC: Order P11-01, 2011 BCIPC 9 (CanLII); Order P06-02, 2006 CanLII 32980 (BC IPC).

INTRODUCTION

[1] Section 23(1)(a) of the *Personal Information Protection Act* (PIPA) gives individuals a right of access to their personal information under the control of an organization. This case involves a request by 52 individuals to Compass Group Ltd. (Compass) for all records related to their applications to work for Compass.

[2] Compass provides food, cleaning and maintenance services. The applicants worked for Compass' predecessor and provided housekeeping services in provincial health authority facilities. When the health authority replaced the applicants' employer with Compass in 2015, Compass invited the applicants to apply to work for Compass. The applicants applied but were not

hired by Compass. Their request for their job application records was made on their behalf by the Hospital Employees Union (HEU).

[3] Compass provided some records but withheld other records and information pursuant to s. 23 of PIPA on the basis that disclosure would reveal:

- confidential commercial information that could harm Compass' competitive position, s. 23(3)(b);
- personal information about another individual, s. 23(4)(c); and
- the identity of an individual who provided personal information about the applicants and the individual providing the personal information does not consent to disclosure of his or her identity, s. 23 (4)(d).

[4] The HEU disagreed with the Compass's decision and requested a review by the Office of the Information and Privacy Commissioner (OIPC). Mediation did not resolve the issues in dispute and the HEU requested that they proceed to inquiry. The HEU subsequently withdrew as the agent for the applicants.

[5] Only 11 of the 52 applicants indicated that they wanted the inquiry to proceed. Therefore, this decision is only about the access requests of those 11 applicants. Compass and four of the applicants provided inquiry submissions.

Preliminary Matters

[6] Compass submits that the requests are frivolous or vexatious and the Commissioner should authorize Compass to disregard them under s. 37(b). Section 37(b) says:

37 If asked by an organization, the commissioner may authorize the organization to disregard requests under section 23 or 24 that
...
(b) are frivolous or vexatious.

[7] Section 37 was not included in the Notice of Inquiry or the Investigator's Fact Report as an issue to be determined in this inquiry. Past orders and decisions of the OIPC have said parties may add new issues at the inquiry stage only if permitted to do so. Compass did not ask the OIPC's permission to raise s. 37 prior to this inquiry. There is no indication that s. 37 was mentioned at any earlier point in the OIPC review and mediation process, and Compass does not explain why it is raising it at this late stage. Further, whether s. 37 is engaged is a moot point. Compass has nothing to gain by seeking authorization to disregard the access request because it has already responded to it. I have decided, therefore, that s. 37 will not be added as an issue to be determined in this inquiry.

[8] The other preliminary matter in this case is Compass' refusal to disclose most of the records in dispute because they are records that the applicants provided to Compass during the interview process.¹ Compass says that for that reason it would be "frivolous" to duplicate this information and disclose it.² As just mentioned, this inquiry is not about whether Compass may disregard the access requests as frivolous pursuant to s. 37(b). Further, s. 23 does not include "frivolous" as an exception to an applicant's right to access their personal information under the control of an organization. Therefore, Compass must disclose to the 11 applicants the records that pertain to each applicant and which have not been redlined as being withheld under s. 23.

ISSUES

[9] The issues in this inquiry are whether Compass is authorized to refuse to disclose information under s. 23(3)(b), or required to refuse to disclose it under ss. 23(4)(c) and 23(4)(d) of PIPA. Section 51(a) of PIPA says that the burden is on an organization, in this case Compass, to prove that it is authorized to refuse the applicants access to their personal information.

DISCUSSION

Information in dispute

[10] For each of the 11 applicants, Compass is refusing to disclose any part of their job interview form, which is called "Hourly Associate Interview Questionnaire."³ Each disputed questionnaire is a form with template questions and "tick" boxes, which have been filled-in by an interviewer in response to what the job applicant said. For one applicant, Compass also withheld two completed reference template forms. Further, there are five pages where Compass refused to disclose a one-word handwritten notation of the hiring decision.⁴

Access to personal information, s. 23

[11] 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.⁵ The parts of s. 23 that are relevant in this case are follows:

¹ The majority of the records in dispute are pages that Compass has not redlined as being withheld pursuant to PIPA.

² Compass' submission, para. 13.

³ In its submission, Compass discloses that this is what it is called.

⁴ There is no information in the records or Compass' submissions about who wrote these notations.

⁵ PIPA, s. 2.

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 the organization;

...

(3) An organization is not required to disclose personal information and other information under subsection (1) or (2) in the following circumstances:

...

(b) 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;

...

(4) An organization must not disclose personal information and other information under subsection (1) or (2) in the following circumstances:

...

(c) the disclosure would reveal personal information about another individual;

(d) 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.

(5) If an organization is able to remove the information referred to in subsection (3) (a), (b) or (c) or (4) from a document that contains personal information about the individual who requested it, the organization must provide the individual with access to the personal information after the information referred to in subsection (3) (a), (b) or (c) or (4) is removed.

Personal information

[12] PIPA defines personal information 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;⁶

[13] Some of the information in the questionnaires is the applicants' personal information, specifically, their names, phone numbers, preferred work schedule and what they said about themselves in response to the interviewer's questions.

[14] Each questionnaire also contains the interviewer's name, their opinion/evaluation of the applicant and a recommendation about whether the

⁶ See PIPA, s. 1 for the definitions of "employee personal information," "contact information" and "work product information." The information at issue does not fall into either of those definitions.

applicant should be hired (which are recorded by check marks in “tick” boxes). This is the interviewer’s personal information. At the same time, the opinion/evaluation about an applicant is also the applicant’s personal information.

[15] As for the two reference forms, they contain the name of the two referees and their opinions about an applicant. That information is the referees’ personal information. The opinions are about the applicant so they are also the applicant’s personal information. The reference forms also contain the name of the person who interviewed the referees, so that is the interviewer’s personal information.

[16] Compass is also refusing to disclose the five one-word notations, which reveal the hiring decision about some of the applicants. There is no information that links the notations to any identifiable individual other than these applicants. I find these notations are about the applicants to whom they pertain and they are only their personal information.

Section 23(3)(b)

[17] Section 23(3)(b) says that an organization is not required to disclose information if its disclosure would reveal confidential commercial information that if disclosed, could, in the opinion of a reasonable person, harm the competitive position of the organization. Compass’ submission about s. 22(3)(b) is as follows:

The Other Information consists of the Individual’s professional opinions and are considered to be confidential commercial information that was used by the Organization in its staffing and recruitment strategy for this business. The Organization performs housekeeping services as a subcontractor to various hospitals. This services industry is very competitive. If this confidential information is revealed, in the opinion of a reasonable person, the competitive position of the Organization in this competitive industry will suffer harm and undue prejudice as competitors will be able to ascertain what forms, documents and questions were used in the labour recruitment process for this type of business. The Organization invests heavily in developing a staffing and recruitment strategy and process for screening potential employee candidates, including the creation of recruitment documents such as the document entitled “Hourly Associate Interview Questionnaire”.

[18] The questionnaire and the two reference check forms contain the standard type of format and questions one would expect of such records. There is nothing that appears to be even remotely unique about the format or content of these records and the questions they pose. The same goes for the five notations. I am not persuaded by Compass’s mere assertion, which is unsupported by any explanation or persuasive evidence, that the information in dispute is confidential commercial information whose disclosure could harm its competitive position. Therefore, I find that s. 23(3)(b) does not apply.

Section 23(4)(c)

[19] The test regarding s. 23(4)(c) is simply whether disclosure would reveal the personal information of another individual.⁷ If so, the organization must withhold the information. As explained above, some of the information in dispute is other individuals' personal information. It consists of the interviewers' personal information in the questionnaires and the personal information of the interviewer and the referees in the two references. Therefore, I find that s. 23(4)(c) applies to that information and Compass must not disclose it. The five notations, however, only contain the applicants' personal information, so s. 23(4)(c) does not apply to them.

Section 23(4)(d)

[20] Section 23(4)(d) prohibits disclosure that 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. Clearly, some of the information in the questionnaires and some of the information in the two reference checks reveal the identities of individuals who provided information about another person. Compass says that it does not have written consent from them to disclose their personal information. I can see no indication that these individuals consented to Compass disclosing their identity.

[21] I find that s. 23(4)(d) applies to that information because disclosing it would reveal the identity of individuals who provided personal information about another individual, and they did not consent to the disclosure of their identity. For that reason, Compass must not disclose this information. Section 23(4)(d) does not apply to the five notations, however, for the same reason s. 23(4)(c) does not apply; they reveal only the applicants' personal information.

Severing, s. 23(5)

[22] Section 23(5) obliges Compass to provide the applicants with access to their personal information if it is able to remove the information to which ss. 23(4)(c) and (d) apply.⁸ I find that this is possible in this case. In a copy of the records that is being given to Compass along with this order, I have highlighted the only information that must be withheld under ss. 23(4)(c) and (d).

⁷ Unlike s. 22 of the *Freedom of Information and Protection of Privacy Act* (FIPPA), s. 23(4)(c) of PIPA does not require that disclosure of the personal information would unreasonably invade another individual's personal privacy. The same point is made in Order P11-01, 2011 BCIPC 9 (CanLII), para 16, and Order P06-02, 2006 CanLII 32980 (BC IPC), para. 53.

⁸ Compass and the applicants made no submissions regarding s. 23(5).

CONCLUSION

[23] For the reasons given above, under s. 52 of PIPA, I make the following order:

1. Compass is not authorized to refuse the 11 applicants access to the information under s. 23(3)(b) of PIPA.
2. I confirm Compass's decision to refuse to disclose, under ss. 23(4)(c) and (d) of PIPA, the information highlighted in the pages that are being sent to Compass along with this order. Compass must disclose to each of the 11 applicants the balance of the information that relates to that applicant.
3. I require Compass to comply with this order and give the 11 applicants access to this information as directed in paragraph 2 immediately above by March 7, 2018. Compass must concurrently provide the OIPC Registrar of Inquiries with a copy of its cover letter to the applicants, together with a copy of the records.

January 23, 2018

ORIGINAL SIGNED BY

Elizabeth Barker, Senior Adjudicator

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