



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
for British Columbia

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Order P18-02

TECK RESOURCES LIMITED

Maria Montgomery
Adjudicator

December 20, 2018

CanLII Cite: 2018 BCIPC 56
Quicklaw Cite: [2018] BCIPCD No. 56

Summary: Teck Resources Limited requested that the Commissioner exercise his discretion under s. 50(1) of the *Personal Information Protection Act* (PIPA) to decline to hold an inquiry into its decision to withhold information in response to the respondent's request for access to his personal information. The adjudicator granted Teck's request because it was plain and obvious that an exception of PIPA applied to the withheld information.

Statutes Considered: *Personal Information Protection Act*, ss. 23(3)(b), 23(4)(c), 23(4)(d) and 50(1).

INTRODUCTION

[1] The respondent (original access applicant) made a request to his former employer, Teck Resources Limited (Teck), for his employee records and investigation files concerning him. This request was made under s. 23 of the *Personal Information Protection Act* (PIPA). The organization provided the respondent with some records, but withheld some information under ss. 23(3)(b), 23(4)(c) and 23(4)(d) of PIPA. The records consist of a pre-employment health evaluation, notes from telephone reference checks, health benefits records and employment related agreements.

[2] The respondent asked the Office of the Information and Privacy Commissioner (OIPC) to review Teck's decision to withhold information. Attempts to resolve this matter through mediation were not successful. The respondent asked that this matter proceed to an inquiry under s. 50 of PIPA.

[3] Teck asked that the Commissioner exercise his discretion under s. 50(1) of PIPA to decline to conduct an inquiry on this matter. The OIPC invited the parties to provide submissions regarding that issue.

[4] The respondent was asked to provide one submission in response to Teck's initial submission. Despite this, he provided several submissions and I have considered all of them only because Teck's submissions acknowledge and reply to all of the issues the applicant raised.

[5] The respondent objected to Teck's last submission, stating that it was not provided for in the schedule of submissions. However, the submission schedule did provide for Teck to have the final reply and it has done so within the prescribed timeline. Consequently, I have considered all of Teck's submissions as well as all of the respondent's submissions.

[6] As part of its initial submission, Teck released information previously withheld under ss. 23(3)(b), 23(4)(c) and 23(4)(d). The remaining withheld information consists of notes from the telephone reference checks regarding the respondent. This information is being withheld under ss. 23(4)(c) and 23(4)(d).

ISSUES

[7] At issue is whether the Commissioner should exercise his discretion provided under s. 50(1) to not hold an inquiry to review Teck's decision to withhold the information in dispute under ss. 23(4)(c) and 23(4)(d).

DISCUSSION

[8] Section 50(1) provides as follows:

50(1) If a matter is not referred to a mediator or is not settled under section 49, the commissioner may conduct an inquiry and decide all questions of fact and law arising in the course of the inquiry.

[9] Decisions P07-02¹ and P12-01² lay out the principles for exercising discretion in favour of not holding an inquiry under s. 50, which I will apply here. The principles are as follows:

- the organization must show why an inquiry should not be held;
- the respondent (the applicant for records) does not have a burden of showing why the inquiry should proceed; however, where it appears obvious from previous orders and decisions that the outcome of an inquiry

¹ Hanne Jensen & Associates Ltd. (Re), 2007 CanLII 52749 (BC IPC) at para 10.

² Otis Canada (Re), 2012 BCIPC 11 (CanLII) at para 10.

- will be to confirm that the organization properly applied PIPA, the respondent must provide “some cogent basis for arguing the contrary.”;
- the reasons for exercising discretion in favour of not holding an inquiry are open-ended and include mootness, situations where it is plain and obvious that the records fall under a particular exception or outside the scope of PIPA and the principles of abuse of process, res judicata and issue estoppel; and
 - it must be clear that there is no arguable case that merits an inquiry.

[10] Teck submits that the Commissioner should exercise his discretion under s. 50(1) of PIPA to decline to conduct an inquiry into this matter because the issue is de minimis, the respondent has involved it in vexatious proceedings and it is plain and obvious that the exceptions to disclosure at ss. 23(4)(c) and 23(4)(d) of PIPA apply.

[11] Teck’s submission refers to several previous decisions produced by this Office that found an inquiry would not proceed because it was plain and obvious that exceptions to disclosure applied. I have reviewed all of the orders and decisions raised in Teck’s submission³ as well as previous orders pertaining to the application of ss. 23(4)(c) and 23(4)(d) of PIPA.⁴

[12] Section 23(4)(c) provides that in response to an applicant’s request for access to their own personal information under s. 23(1), an organization must not disclose personal information and other information if the disclosure would reveal personal information about another individual. As stated in Order P11-01, the test for s. 23(4)(c) is “simply whether disclosure would reveal the personal information of another individual. If so, the organization must withhold the information.”⁵ This test was also followed in Orders P14-03⁶ and P18-01.⁷

[13] Section 1 of PIPA defines personal information as “information about an identifiable individual and includes employee personal information but does not include a) contact information or b) work product information. Contact information is defined as “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 is defined as “information prepared or collected by an individual or group of individuals as 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.”

³ Decisions P17-02, F11-01, F07-01, F07-02, F08-06, F10-10.

⁴ Orders P18-01, P14-03, P11-01, P06-02, P06-01.

⁵ Para 16.

⁶ Para 13.

⁷ Para 19.

[14] The withheld information consists of Teck’s notes of reference checks about the respondent obtained from two named individuals. The withheld information comprises the individuals’ statements about the respondent and includes their thoughts, opinions and responses to questions. As a result, it is information about those identifiable individuals. It is clearly not “contact information” as defined by PIPA. The disputed information is also not the “work product information” of the Teck employee who made the notes and collected the personal information because it is not about that employee. The personal information is about the individuals who provided the references. Therefore, I find that the information clearly contains the personal information of third parties and s. 23(4)(c) prevents disclosure of this information. Given this finding, it is unnecessary to consider the application of s. 23(4)(d).

[15] As the principles stated above explain, while the applicant does not have a burden to prove why an inquiry should proceed, the applicant must provide some cogent basis for arguing why an inquiry must proceed if it is obvious from previous orders and decisions that the outcome of an inquiry will be to confirm that the exception to disclosure was properly applied.

[16] The applicant submits that the inquiry should proceed because his actions are not vexatious. The applicant also makes a connection between the issues in this case and matters of criminal negligence, municipal corruption and terrorism. However, none of these matters or issues are relevant for determining the application of s. 23(4)(c) to the information. As a result, no cogent basis for proceeding with an inquiry has been provided.

CONCLUSION

[17] For the reasons stated above, Teck’s application made under s. 50(1) to decline to proceed with an inquiry regarding the respondent’s request for records is granted. An inquiry therefore will not proceed and the OIPC’s file will be closed.

December 20, 2018

ORIGINAL SIGNED BY

Maria Montgomery, Adjudicator

OIPC File No.: P18-76501