



Order P20-01

THE CANADA LIFE ASSURANCE COMPANY

Lisa Siew
Adjudicator

February 10, 2020

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Summary: An applicant requested access to his personal information from The Canada Life Assurance Company (Canada Life). Canada Life refused to disclose some information to the applicant under ss. 23(3)(a), 23(4)(c) and 23(4)(d) of the *Personal Information Protection Act*. The adjudicator determined Canada Life was authorized or required to withhold some information under s. 23(3)(a) since solicitor client privilege applied and under s. 23(4)(c) and s. 23(4)(d) since the disclosure would reveal personal information about another individual or the identity of an individual providing personal information about another person. The adjudicator found Canada Life was not authorized or required to withhold the remaining information from the applicant.

Statutes Considered: *Personal Information Protection Act*, ss. 1 (definition of “personal information”, “contact information” and “work product information”), 23(3)(a), 23(4)(c) and 23(4)(d). *Freedom of Information and Protection of Privacy Act*, schedule 1 (definition of “contact information”) and s. 14.

INTRODUCTION

[1] Section 23(1) of the *Personal Information Protection Act* (PIPA) gives individuals a right to access their personal information under the control of an organization. An individual (the applicant) requested access to his personal information from The Canada Life Assurance Company (Canada Life).¹ The applicant made two separate requests for his personal information covering the total period of August to October 2017.

[2] Canada Life provided some records to the applicant, but it withheld other records and information relying on several exceptions to disclosure under s. 23 of

¹ The applicant submitted his request to The Great-West Life Assurance Company. Effective January 1, 2020, The Great-West Life Assurance Company amalgamated and is now The Canada Life Assurance Company. For ease of reference, I will refer to the organization as Canada Life.

PIPA. The applicant disagreed with Canada Life's decision and requested a review by the Office of the Information and Privacy Commissioner (OIPC). Mediation did not resolve all the issues in dispute and the applicant requested that the matter proceed to inquiry.

[3] During the mediation and inquiry process, Canada Life released additional information to the applicant and also revised the provisions it was relying on to refuse access.² As it stands, Canada Life is withholding information under ss. 23(3)(a), 23(4)(c) and 23(4)(d).

ISSUES

[4] The issues I must decide in this inquiry are as follows:

1. Is Canada Life authorized to refuse to disclose information under s. 23(3)(a)?
2. Does s. 23(4)(c) require Canada Life to refuse to disclose information?
3. Does s. 23(4)(d) require Canada Life to refuse to disclose information?

[5] Section 51(a) of PIPA places the burden on Canada Life, as the organization, to prove that the applicant has no right to access his personal information.

[6] The parties' submissions include facts and arguments regarding other matters not set out in the OIPC investigator's fact report or the notice of inquiry. I will not address or discuss those matters as part of this inquiry. To be clear, the issues that I will decide in this inquiry are limited to those identified above.

DISCUSSION

Records and information at issue

[7] There were 51 pages of responsive records and the information at issue appears on approximately 14 of those pages. Canada Life refuses to disclose the following information in those records:

- Information in emails between Canada Life employees, including its in-house legal counsel, which is being withheld under s. 23(3)(a);

² Canada Life previously withheld 15 pages of records under s. 23(3)(b) of PIPA; however, it reconsidered this decision and partially released these records to the applicant while withholding some information under s. 23(4)(c).

- The last names of some of its employees, which are being withheld under s. 23(4)(c); and
- Information in emails between a Canada Life employee and the employee of another organization, which is being withheld under s. 23(4)(d).

Section 23

[8] Section 23 of PIPA gives individuals a right to access their personal information under the control of an organization; however, this section also sets out several exceptions to an individual's right of access. Sections 23(3) and (4) protect other interests by placing limits on an individual's right to access their own personal information.

[9] The parts of s. 23 that are relevant in this case are 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 the organization;

...

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

(a) the information is protected by solicitor client privilege;

...

(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

[10] Section 23(1) of PIPA gives individuals a right to access their own personal information. Section 1 of PIPA defines “personal information” as information about an identifiable individual and includes employee personal information, but does not include contact information or work product information. Therefore, the information at issue must be about the applicant for access to be considered under s. 23(1).

[11] An applicant has no right of access under PIPA to another individual’s personal information.³ However, where another individual’s information is incorporated with the applicant’s personal information, then the applicant has a right to access that information, subject to any exceptions to disclosure under ss. 23(3) and 23(4).

[12] Canada Life claims some of the withheld information does not contain the applicant’s personal information. It says some of the information consists of “internal privileged discussions with respect to the handling of the applicant’s case.”⁴ Contrary to Canada Life’s claim, I conclude all of this information about the applicant’s case with Canada Life is his personal information.

[13] As noted, PIPA defines personal information, in part, as information about an identifiable individual. The withheld information is clearly about an identifiable individual. Some of these emails mention the applicant by name and contain information about him or his interactions with Canada Life and other individuals. I also find some of the information about the applicant reveals information about other individuals. Canada Life has withheld this information under ss. 23(3)(a), 23(4)(c) or 23(4)(d); therefore, I will consider whether those exceptions apply.

Section 23(3)(a): solicitor client privilege

[14] Under s. 23(3)(a), the term “solicitor client privilege” encompasses both legal advice privilege and litigation privilege.⁵ Canada Life does not explicitly say so, but its submissions suggest it is withholding the information at issue on the basis of legal advice privilege. Legal advice privilege applies to confidential communications between solicitor and client made for the purpose of obtaining and giving legal advice.⁶

[15] An organization that is refusing to disclose information under s. 23(3)(a) must establish the following criteria to prove that legal advice privilege applies:

³ Order P06-02, 2006 CanLII 32980 at para. 41. Order P19-01, 2019 BCIPC 3 at para. 11.

⁴ Canada Life submission at p. 2.

⁵ P06-01, 2006 CanLII 13537 at para. 53.

⁶ *Ibid.*

1. There must be a communication, whether oral or written;
2. The communication must be of a confidential character;
3. The communication must be between a client (or his agent) and a legal advisor; and
4. The communication must be directly related to the seeking, formulating, or giving of legal advice.

If these four conditions are satisfied then the communications (and papers relating to it) are privileged.⁷

[16] The information at issue appears on pages 1-4, 5, 12 and 21-23 of the records. Canada Life provided the withheld information for my review. It says this information reveals correspondence from some of its employees to in-house legal counsel seeking his legal opinion.

[17] I have reviewed the personal information at issue and find solicitor client privilege applies to some of it. I can see there are emails where Canada Life employees are corresponding with an individual identified as the organization's in-house legal counsel.⁸ The participants in the emails are all Canada Life employees; there are no other persons included in these communications. Based on the contents of these emails, I am also satisfied the Canada Life employees are seeking legal advice from their legal counsel on a number of topics relating to the applicant or providing information to the lawyer for the purpose of obtaining legal advice.⁹ I, therefore, find Canada Life has proven legal advice privilege applies to these emails.

[18] However, there are other emails withheld under s. 23(3)(a) that do not fit the description I have just given.¹⁰ Based on the content of these emails, I am not satisfied the employees are seeking or obtaining legal advice from the lawyer in these communications or even discussing legal matters. Instead, an employee appears to be seeking the expertise or advice of other non-legal employees to address matters involving the applicant. Unless an email message seeks, provides or reveals legal advice or privileged information, it should be disclosed if

⁷ *R v. B*, 1995 CanLII 2007 (BC SC) at para. 22 and *Solosky v. The Queen*, 1979 CanLII 9 (SCC) at p. 838. See also *Festing v. Canada (Attorney General)*, 2001 BCCA 612 at para. 92. The test for determining whether legal advice privilege applies under s. 23(3)(a) of PIPA is the same as for s. 14 (solicitor client privilege) of the *Freedom of Information and Protection of Privacy Act*. See Order P06-02, 2006 CanLII 32980 at paras. 13-14.

⁸ Information found on pages 1-5 of the records.

⁹ This exchange of information is referred to as the "continuum of communications" between the client and the lawyer: *Camp Development Corporation v South Coast Greater Vancouver Transportation Authority*, 2011 BCSC 88 at paras. 40-46.

¹⁰ Information found on pp. 12, 21, 22-23 (duplicated on pp. 28-29).

it contains an applicant's personal information, subject to any other exceptions to disclosure.¹¹

[19] I also note that one email does not even include the lawyer¹² and when he is included in the communications, the lawyer is only "cc'd" on these emails. The courts are clear that an email does not become privileged simply by sending a copy of it to a lawyer or including the lawyer in internal communications between employees of an organization.¹³ In this case, the employees do not direct any specific questions to the lawyer in these emails and instead discuss matters between themselves. It is also not obvious to me that these emails are part of the necessary exchange of information between a solicitor and client so that legal advice could be sought and given.¹⁴ I, therefore, find that legal advice privilege does not apply to the information withheld in these emails and Canada Life cannot withhold this information under s. 23(3)(a).

Section 23(4)(c): another individual's personal information

[20] Section 23(4)(c) requires an organization to withhold information that would reveal personal information about another individual. Canada Life withheld the last name of an employee in an internal email under s. 23(4)(c).¹⁵ It also withheld the last names of three other employees in two separate documents both of which are titled "Portfolio Assessment and Management Plan."¹⁶

[21] Section 23(4)(c) is a mandatory exclusion to access; therefore, I have also considered whether s. 23(4)(c) may apply to all the withheld information, even though Canada Life may not have applied this provision. In considering what information may be withheld under s. 23(4)(c), I note that the term "another individual" under this provision refers to an individual other than the applicant.¹⁷ Therefore, the purpose of s. 23(4)(c) is to protect the personal information of people other than the applicant.

[22] Section 1 of PIPA defines personal information as information about an identifiable individual and includes employee personal information, but does not include contact information or work product information. Therefore, the first step

¹¹ *Murchison v Export Development Canada*, 2009 FC 77 at para. 44.

¹² Page 21 of the records.

¹³ *Murchison v. Export Development Canada*, 2009 FC 77 at para. 44; *Imperial Tobacco Canada Limited v. The Queen*, 2013 TCC 144 at para. 57; *Keefer Laundry Ltd. v. Pellerin Milnor Corp.* 2006 BCSC 1180 at paras. 60-61.

¹⁴ This exchange of information is referred to as the "continuum of communications" between a client and a lawyer: *Camp Development Corporation v South Coast Greater Vancouver Transportation Authority*, 2011 BCSC 88 at paras. 40-46.

¹⁵ Information found on p. 39.

¹⁶ Information found at p. 40 (duplicated on p. 44), 43 (duplicated on p. 47), 48 and 50.

¹⁷ Order P14-03, 2014 BCIPC 49 (CanLII) at para. 13. Order P11-01, 2011 BCIPC 9 (CanLII) at para. 17.

in assessing whether information is personal information” is determining if the information is “about an identifiable individual.”¹⁸ In order to be personal information, the information must be reasonably capable of identifying a particular individual either alone or when combined with information from other available sources.¹⁹

[23] The second step is to determine whether the information is excluded from the definition because it is contact information or work product information.²⁰ Both of those terms are defined under s. 1 of PIPA. If the information at issue does not qualify as contact information or work product information, then it is personal information about another individual that organizations must refuse to disclose under s. 23(4)(c).

[24] To support its decision to withhold information under s. 23(4)(c), Canada Life suggests that consent is a relevant factor. It says “an organization may sever such identifying information where the employee has not consented to its disclosure.”²¹ However, under s. 23(4)(c), organizations *must* refuse to disclose information that would reveal personal information about other individuals. Consent is not relevant under s. 23(4)(c). In other words, an organization does not need an employee to refuse to provide consent to withhold their personal information under s. 23(4)(c).

[25] Applying the above analysis to the records in dispute, I am not satisfied that some information in these records qualifies as personal information. In some emails, it was not apparent to me that the information was about an identifiable individual since no names were used and there was no obvious identifying information.²² However, I find the last names withheld by Canada Life are clearly about identifiable individuals. I can also see that there is information about several individuals in a number of other emails such as several individual’s names, a person’s home address, and a person’s work email address.²³ I find all of this information clearly identifies a particular individual on its own or when combined with other available information in the records. The question then is whether this information qualifies as contact information or work product information. If so, then Canada Life cannot withhold it under s. 23(4)(c).

¹⁸ Order P13-01, 2013 BCIPC 23 at para. 16.

¹⁹ Order P12-01, 2012 BCIPC 25 at para. 82.

²⁰ Order P13-01, 2013 BCIPC 23 at para. 16.

²¹ Canada Life initial submission at p. 1.

²² Page 12 of the records.

²³ Information found at pp. 35, 36 and 37. Canada Life also withheld information on these pages under s. 23(4)(d).

Contact information

[26] 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.”²⁴ I could not find a PIPA order that interpreted the term “contact information.” However, the definition of contact information in FIPPA is similar to the one in PIPA, and there have been numerous FIPPA orders that have interpreted that term.

[27] While FIPPA orders are not binding, I find them appropriate and useful in this case to determine whether information qualifies as contact information under PIPA. This approach is consistent with previous OIPC orders that considered FIPPA in their interpretation of terms or provisions in PIPA.²⁵ These orders found that, when interpreting a statute, it is appropriate to refer to similar language or provisions in other statutes dealing with the same subject matter.²⁶ In Order P19-03, Adjudicator Francis determined that FIPPA and PIPA are in many ways materially similar and they undoubtedly deal with the same subject matter (i.e., the collection, use and disclosure of individual’s personal information).²⁷

[28] Whether information will qualify as contact information under FIPPA depends on the context in which the information appears or in which it is sought or disclosed.²⁸ Numerous FIPPA orders have found that a third party’s name, mailing address, telephone number or email address is contact information, and not personal information, where the third party is acting in a business capacity or communicating for business purposes.²⁹ I adopt this approach taken by previous FIPPA orders and will apply it in my interpretation of “contact information” under PIPA.

[29] In this case, Canada Life withheld the last name of an employee in the “from” field and the signature block of an email.³⁰ It also withheld the name, job title, mailing address, work phone numbers and work email address of another employee in several emails.³¹ I can see that these employees are communicating in their professional capacity and for business purposes. I, therefore, find this

²⁴ Section 1 of PIPA.

²⁵ Order P19-03, 2019 BCIPC 42 (CanLII) at paras. 22-24 and Order P12-01, 2013 BCIPC 4 (CanLII) at para. 31.

²⁶ For example, Order P19-03, 2019 BCIPC 42 (CanLII) at para. 23, quoting Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed. (Markham, Ont.: LexisNexis Canada, 2014) at para. 13.25.

²⁷ Order P19-03, 2019 BCIPC 42 (CanLII) at para. 23.

²⁸ Order F14-45, 2014 BCIPC 48 at para. 41; Order F08-03, 2008 CanLII 13321 at para. 82.

²⁹ Order F17-01, 2017 BCIPC 1 at para. 49; Order F18-20, 2018 BCIPC 23 at para. 8; Order F14-45, 2014 BCIPC 48 at para. 41; Order F16-46, 2016 BCIPC 51 at para. 16.

³⁰ Information located on p. 39.

³¹ Information located at pp. 35-37.

information qualifies as “contact information” and Canada Life cannot withhold it under s. 23(4)(c).

[30] The remaining information at issue does not qualify as contact information since it is not information to enable an individual at a place of business to be contacted. This information consists of three employees’ last names in two separate documents both of which are titled “Portfolio Assessment and Management Plan.”³² It also includes information about other individuals, such as names and a home address, in the body of an email a Canada Life employee sent to another organization.³³ Based on the context in which this information appears, none of this information is being provided for business communication purposes. The remaining question then, is whether this information qualifies as work product information.

Work product information

[31] Section 1 of PIPA defines “work product information” as “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.” Previous PIPA orders have found that information will qualify as work product information when it comes into existence through the input or conscious, directed actions of individuals as part of their responsibilities or activities related to their employment.³⁴

[32] As noted, Canada Life withheld three employees’ last names in two separate documents both of which are titled “Portfolio Assessment and Management Plan.”³⁵ I find only the last name of one particular employee with the first initial “T” qualifies as work product information. Canada Life disclosed information in these records that reveals this employee created these two documents and that these plans are related to the applicant. Therefore, to the extent the withheld information is about this employee, it is not her personal information because it is her work product information.

[33] As for the other two employees’ last names, it is not apparent that these employees prepared or collected the information in these portfolio assessment and management plans; therefore, I do not find this information qualifies as their work product information. The same conclusion applies to the names of some individuals and one person’s home address in an email sent by a Canada Life

³² Information located at p. 40 (duplicated on p. 44), 43 (duplicated on p. 47), 48 and 50.

³³ Information located at p. 37 of the records.

³⁴ Order P12-01, 2013 BCIPC 4 at para. 96. Order P14-03, 2014 BCIPC 49 at para. 19.

³⁵ Information located at p. 40 (duplicated on p. 44), 43 (duplicated on p. 47), 48 and 50.

employee to an individual from another organization.³⁶ The Canada Life employee mentions these individuals in the email, but none of these individuals prepared or collected information for this email. I, therefore, conclude Canada Life must withhold all of this personal information under s. 23(4)(c).

Section 23(4)(d): identity of an individual who does not consent

[34] Section 23(4)(d) requires an organization to withhold information that would reveal the identity of an individual who has provided personal information about another individual. An organization can only rely on this provision if the individual providing the personal information does not consent to the disclosure of their identity.

[35] Canada Life withheld all of the information found on pages 35 to 37 of the records under s. 23(4)(d). The withheld information is located in several emails between one of its employees and an employee from another organization. Canada Life argues that it is required to withhold this information because the other organization does not consent to the release of the information.

[36] I can see in one email that the employee from another organization is providing some personal information about the applicant to a Canada Life employee.³⁷ I also find there is some information in several emails that would reveal the identity of the person such as their name, job title, work email address and some comments in the emails. Therefore, the next question is whether the individual providing personal information about the applicant does not consent to the disclosure of his or her identity.

[37] Canada Life says it contacted the other organization to inquire whether it can release the requested documentation to the applicant and that the other organization would not authorize the release of this information. The purpose of s. 23(4)(d) is to protect the identity of an individual providing personal information about someone else. There was no evidence before me that the person providing the personal information about the applicant does not consent to Canada Life disclosing their identity.

[38] Given the importance that PIPA places on protecting an individual's personal information, I offered Canada Life an opportunity to provide further evidence to support its assertions about s. 23(4)(d). On an *in camera* basis, Canada Life provided further explanation and written confirmation from the individual whose identity is being withheld that this person does not consent to the disclosure of their identity. Based on this information, I am satisfied that s. 23(4)(d) applies.

³⁶ Information located on p. 37 of the records.

³⁷ Information located on p. 35 of the records.

[39] Therefore, I conclude Canada Life can withhold information in the emails that reveals this person's identity, specifically the person's name, title, work email address and some comments and information in the emails. However, I do not find s. 23(4)(d) applies to the rest of the information in these emails since it would not reveal the identity of the individual who provided personal information about the applicant. For example, some of the remaining information only reveals the identity of the Canada Life employee and specific information about the applicant.

Section 23(5) severance

[40] Section 23(5) requires Canada Life to provide the applicant with access to his personal information if it is able to remove the information to which ss. 23(3)(a), 23(4)(c) and (d) apply. I find that is possible in some instances to sever the information that may be withheld under s. 23 from the applicant's personal information. However, there is other information where severance is not possible because it is too intertwined with the applicant's personal information. In those instances, Canada Life is not required to provide the applicant with that information.

[41] For clarity, in a copy of the records that is being given to Canada Life along with this order, I have highlighted the information that Canada Life is not authorized or required to withhold under s. 23.

CONCLUSION

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

1. Subject to paragraph 2 below, I confirm in part Canada Life's decision to refuse access to some of the information withheld under ss. 23(3)(a), 23(4)(c) and 23(4)(d).
2. Canada Life is not authorized or required by PIPA to refuse access to the information highlighted in a copy of the records provided with this order.
3. Canada Life must disclose to the applicant the highlighted information it is not authorized or required to withhold and it must concurrently copy the OIPC registrar of inquiries on its cover letter to the applicant, along with a copy of the relevant records.

[43] Under s. 53 of PIPA, Canada Life is required to comply with this order by no later than March 24, 2020.

February 10, 2020

ORIGINAL SIGNED BY

Lisa Siew, Adjudicator

OIPC File No.: P17-72413