



Order P23-11

EPIC RIDES

Allison J. Shamas
Adjudicator

September 15, 2023

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Summary: The applicant requested information from Epic Rides under the *Personal Information Protection Act (PIPA)*. Epic Rides did not respond, but stated during the inquiry that it did not have the applicant's personal information under its control. The adjudicator found that Epic Rides failed to meet its obligations under s. 29 and ordered Epic Rides to respond to the request within 30 days, in compliance with the requirements of ss. 28 and 30 of PIPA.

Statutes Considered: *Personal Information Protection Act*, [SBC 2003] c. 63 ss. 1, 2, 28, 29(1)(a), 29(1)(b), 30(1)

INTRODUCTION

[1] An individual (AB) requested his personal information and other related information from Epic Rides under the *Personal Information Protection Act (PIPA)*. Epic Rides did not respond.

[2] AB requested that the Office of the Information and Privacy Commissioner (OIPC) review Epic Rides' failure to respond to his access request within the time frame required by PIPA. Mediation failed to resolve the request, and it proceeded to inquiry.

ISSUES

[3] The issue to be decided in this inquiry is whether Epic Rides responded to AB's access request in accordance with the timelines set out in s. 29 of PIPA.

DISCUSSION

Background

[4] Epic Rides is in the business of providing transportation between the City of Vancouver and Whistler Village in the province of British Columbia. AB was a customer of Epic Rides.

[5] AB and Epic Rides became involved in a dispute over a travel booking. The applicant asserts that during the dispute, a representative of Epic Rides (the Representative) told him that Epic Rides had his picture and video footage of him. Three days later, AB wrote to the Representative and asked that Epic Rides provide him with all personal information Epic Rides held about him including the picture and video footage. When Epic Rides did not respond to the request, AB requested a review from the OIPC.

Parties' Submissions

[6] Epic Rides' submissions in this inquiry were brief. Initially it wrote "We have nothing on record on this individual, we have told you guys multiple times now."¹ When the OIPC's registrar of inquiries asked Epic Rides whether it wished to provide additional information in support of its position, Epic Rides wrote: "We have no information on this individual. If you want to come audit all of our devices feel free."²

[7] AB argues that Epic Rides' position that it does not have his personal information is implausible and warrants scrutiny. He states that as a past customer of Epic Rides, he had to provide Epic Rides with his name, phone number, email, date of travel, origin and location of travel, and credit card information. He asserts that Canadian tax legislation requires businesses retain such information for a period of at least six years, and further that it is likely that Epic Rides' merchant services agreement with its bank requires retention for a period of 18 months or more. On these bases AB argues that given its obligations, it is reasonable to expect that Epic Rides retains, at a minimum, a record of his prior transactions.

[8] Turning to the photos and video referenced in the Representative's email messages, AB argues that Epic Rides' current position that it does not have his personal information is directly contradicted by its earlier statements. In this regard, he argues that the Representative's statements about his picture and video footage make clear that Epic Rides collected photo and video footage of him with the intention to hold the information. He also notes that the

¹ Email dated July 18, 2023.

² Email dated July 28, 2023.

Representative is listed as a director and manager of Epic Rides and as the nominated contact in Epic Rides' privacy policy.

[9] Finally, AB asserts that if it was truly the case that Epic Rides does not hold his personal information, it should have said so in response to his January 30, 2023 request for information.

[10] Addressing the issue of remedy, AB sets out several possible explanations for the contradiction and argues that Epic Rides should be invited to explain which possible explanation is correct. He also submits that Epic Rides should be required to explain what steps it has taken to ascertain whether it holds his personal information.

[11] In support of his position, AB relies on an email confirmation of his booking from Epic Rides, which includes his name, email address, telephone number, date of travel, origin and destination of travel, and confirmation that his method of payment was credit card. He also provides a series of email communications between himself and the Representative which include the statements about his picture and video footage, and his PIPA request.

[12] In reply to AB's inquiry submission, Epic Rides states, "Again. We have no information on this person." It did not address the evidence and argument put forward by AB.

The Legislative Scheme

[13] The purpose of PIPA is to govern the collection, use and disclosure of personal information by organizations.³

[14] Section 1 of 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.⁴ "Contact information" means "information to enable an individual at a place of business to be contacted," while "work product information" means information prepared as part of responsibilities related to employment or business but does not include personal information about an individual who did not prepare or collect the personal information.⁵

[15] Relying on the definition of personal information found in s. 1, s. 23(1)(a) sets out what information an organization must provide to an individual on request. It provides:

³ Section 2 of PIPA.

⁴ Section 1 of PIPA.

⁵ For the full definition of these terms, s. 1 of PIPA.

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;
- (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.

[16] Part 8 of PIPA sets out requirements of both individuals and organizations when an individual requests access to their personal information from an organization. For instance, s. 26 permits an individual to make a request of an organization as permitted under section 23. Section 25 provides that in Part 8, "applicant" means an individual who makes a request under s. 27. Section 27 provides that for an individual to obtain access to his or her personal information, the individual must make a written request that provides sufficient detail to enable the organization, with a reasonable effort, to identify the individual and the personal information being sought. Sections 28 and 30 create obligations on organizations to assist applicants and establish substantive requirements about the content of an organization's response.

[17] Finally, s. 29, which is the issue in this inquiry, establishes time limits within which an organization must respond to an applicant:

Time limit for response

29 (1) Subject to this section, an organization must respond to an applicant not later than

- (a) 30 days after receiving the applicant's request, or
- (b) the end of an extended time period if the time period is extended under section 31.

It is within this legislative scheme that I must determine whether Epic Rides responded to AB's access request in accordance with the timelines in s. 29.

The Facts

[18] In his response, AB provides information and argument that are key to determining the issues in dispute. AB's information and argument is corroborated by documentary evidence, and not disputed by Epic Rides. Accordingly, for the purposes of this review, I find the following to be the facts of this case.

[19] .On November 24, 2022, AB booked a trip with Epic Rides for travel on January 27, 2023. Epic Rides charged his credit card for the trip. The booking confirmation email from Epic Rides contains AB's name, phone number, email, date of travel, origin and destination of travel, and confirmation that AB paid by credit card.

[20] A dispute arose between AB and Epic Rides over the booking. During a January 27, 2023 email exchange with AB, a representative of Epic Rides (the Representative) wrote: "We have your picture. If you ever approach any of our buses again we will call the police immediately. ... We have cameras on our buses and video evidence of the shit you guys just tried to pull ...we will arbitrate this using video evidence and this email chain in which you acknowledge purchasing the tickets."⁶

[21] The evidence put forward by AB establishes that in the months and days leading up to his request, Epic Rides had AB's personal information under its control.⁷ While Epic Rides asserts that it does not have AB's information, it neither addresses what was true at the time AB made his request, nor provides any evidence or explanation to support its assertion in the inquiry that AB's personal information is not under its control. Accordingly, I find that Epic Rides had AB's personal information under its control at the time AB made his access request.

[22] In response, on January 30, 2023, AB wrote to the Representative and asked that Epic Rides provide him with the following:

- copies of any and all information Epic Rides holds about me, including but not limited to the video footage and picture to which you refer;
- information about the ways in which any information Epic Rides holds about me is being used;
- the full names of any individuals and the names of any other organisations to which any information Epic Rides holds about me has been disclosed;
- the portion of Epic Rides' privacy policy that addresses the use of video or other surveillance, including but not limited to the reasons for the collection of that information and an explanation of the steps Epic Rides has taken and is taking to ensure the security of that information;

⁶ Emails dated January 27, 2023 between the applicant and the Representative which were attached to AB's response.

⁷ In the booking confirmation email, Epic Rides provided AB's own personal information to him. In the January 27, 2023 email exchange Epic Rides told AB that it held his picture and video footage of him.

- a copy of the consent Epic Rides was required to obtain from me to collect that personal information and that you believe you in fact obtained (at no stage did I provide such consent, expressly or impliedly).⁸

[23] Epic Rides did not respond to AB's request prior to his request for review from the OIPC. On March 27, 2023, AB requested a review from the OIPC.

Analysis

[24] Having considered the parties' submissions, I find that I must consider three questions to decide the issues in dispute.

1. Does s. 29 apply to the facts before me? That is, what is the relevance of Epic Rides' assertion that it does not have AB's personal information under its control?
2. If s. 29 does apply, did Epic Rides fail to respond to AB's request within the legislated timelines set out in s. 29 of PIPA?
3. If Epic Rides did contravene s. 29, what is the appropriate remedy?

I will consider each in turn.

Does Section 29 Apply?

[25] Epic Rides' sole defence is that it does not have AB's information. I am not persuaded by Epic Rides' defence for two reasons. First, the relevant time period for assessing Epic Rides' obligations is what was true at the time of AB's request, not at the time of the inquiry. Second, for the reasons that follow, I find that the obligations in s. 29 are triggered by the content of an individual's request, not by the information under the organization's control.

[26] Section 29 requires an "organization" to respond to an "applicant" within certain timelines. I will begin with the definitional issues.

[27] Under s. 1 of PIPA, an "organization" includes "a person, an unincorporated association, a trade union, a trust or a not for profit organization."⁹ Epic Rides is a business operating in the province of BC. It does not dispute that it is an "organization", and I find that it is.

[28] Section 25 provides that for the purpose of Part 8 of PIPA, "applicant" means an individual who makes a request under s. 27.¹⁰ Section 27 sets out four

⁸ AB's access requested dated January 30, 2023.

⁹ The definition of an organization expressly excludes a number of entities and individuals, none of which are relevant to this case.

¹⁰ Section 25 of PIPA.

requirements for a request: An individual must make a written request for their personal information that provides sufficient detail to enable the organization, with a reasonable effort, to identify the individual and the personal information being sought.¹¹ For the reasons that follow, I have no difficulty finding that AB satisfied each of the requirements in s. 27 and that he is an “applicant”.

[29] AB is an individual, who made a written request to Epic Rides. He requested all personal information Epic Rides holds about him, including his picture, video footage of him, and any consents he signed. His request is for information about an identifiable individual (AB) that is not contact information or work product information. Accordingly, I find that AB requested his own “personal information”.

[30] Finally, I find that AB’s request provided sufficient detail to enable Epic Rides to identify him and the personal information he was seeking. AB made his request three days after the dispute with the Representative, in an email in which he quoted the Representative’s statements about the picture and video footage. There is no question that when Epic Rides received AB’s request, the Representative was able to identify AB and precisely which picture and video footage AB was seeking.

[31] I come to the same determination about AB’s requests for consent forms and all personal information Epic Rides holds about him. The request for consent forms identifies specific documents. Epic Rides ought to know if AB signed its consent forms and, if so, be able to identify them. While the request for all information Epic Rides holds about him is somewhat broad, AB’s sole involvement with Epic Rides was as a customer. Epic Rides should know what personal information it collects about its customers and be able to identify that information. This is particularly true given the proximity in time between the booking and travel and AB’s request.

[32] Accordingly, I find that AB satisfies the definition of “applicant” in s. 25 and for the purpose of s. 29.

[33] Having addressed the definitional issues, I now turn to the interpretation of s. 29 as a whole. The preferred approach to statutory interpretation in Canada is well-known: “The words of an Act are to be read in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament”.¹²

¹¹ Section 27 of PIPA.

¹² The Supreme Court of Canada has repeatedly cited this quote from R. Sullivan, (5th ed. 2008), at p. 1, citing E. A. Driedger, *The Construction of Statutes* (1974), at p. 67. See *Re Rizzo & Rizzo Shoes Ltd.*, 1998 CanLII 837 (SCC), and more recently *R. v. Basque*, 2023 SCC 18 (CanLII) at para. 63, *R. v. Breault*, 2023 SCC 9 (CanLII) at para. 25, and *Peace River Hydro Partners v. Petrowest Corp.*, 2022 SCC 41 (CanLII) at para. 91.

[34] Section 29 provides that an organization must respond to an applicant within specific timelines. It uses mandatory language which contains no exceptions. Furthermore, the term “applicant” is defined based on the content of the individual’s request, not whether the organization has the individual’s personal information under its control. The plain meaning of s. 29 requires an organization to respond to all requests that meet the four requirements in s. 27, regardless of whether it has any personal information about the individual under its control. On the plain meaning of s. 29, Epic Rides was required to comply with s. 29 regardless of whether it had AB’s personal information under its control when he made his request.

[35] The history of Canada’s private sector privacy legislation is key to understanding the legislative intention behind s. 29 and provides further support for the interpretation available on the plain meaning of s. 29. In 1996 the Canadian Standards Association (CSA) established a set of 10 principles for the protection of personal information.¹³ The 10 principles reflect global privacy standards and were recognized as Canada’s national standard in 1996. When PIPA was enacted in 2003 it was founded on and codified the 10 principles.¹⁴

[36] Principle 9 is “individual access.” It establishes obligations on both individuals and organizations for dealing with requests for access to personal information.¹⁵ Part 8 of PIPA in which s. 29 is found also governs requests for access to personal information and does so through substantially the same set of dual obligations on individuals and organizations found in principle 9. A comparison of the two leaves no question that Part 8 of PIPA was founded on principle 9.

[37] Principle 9 provides, in part:

Upon request, an individual shall be informed of the *existence*, use, and disclosure of his or her personal information and shall be given access to that information. An individual shall be able to challenge the accuracy and completeness of the information and have it amended as appropriate.

4.9.1 *Upon request, an organization shall inform an individual whether or not the organization holds personal information about the individual. ...*

¹³ The 10 principles were set out in a document titled the National Standard of Canada Model Code for the Protection of Personal Information, CAN/CSA-Q830-96. It is colloquially referred to as the “Model Code”.

¹⁴ Report of the Special Committee to Review the Personal Information Protection Act, Modernizing British Columbia’s Private Sector Privacy Law, December 2021, Legislative Assembly of British Columbia, Second Session, 42nd Parliament at page 12.

¹⁵ Both principle 9 and Part 8 also address requests to correct personal information.

4.9.4 An organization shall respond to an individual's request within a reasonable time ... (emphasis added)¹⁶

[38] The words in Principle 9 expressly require a timely response regardless of whether an organization holds the individual's personal information. Given the relationship between principle 9 and Part 8 of PIPA, it is my view that an interpretation of s. 29 that accords with Principle 9 best accords with the legislative intent behind s. 29.

[39] A closer examination of the scheme of Part 8 further illustrates why the interpretation available on the plain meaning of s. 29 should be preferred. Part 8 governs requests for personal information by establishing dual obligations on applicants and organizations. Specifically, ss. 25, 26 and 27 require that individuals' requests be clear, in writing and relate to the individual's own personal information, while ss. 28, 29 and 30 require organizations to assist applicants, explain the reasons for their refusals, and do so in a timely manner. Together, these provisions promote understanding between "applicants" and "organizations" and thereby facilitate the resolution of requests.

[40] The timelines in s. 29 are a fundamental part of these obligations. An interpretation of s. 29 that relieves an organization of the obligation to respond when it does not hold an applicant's personal information would undermine the entire scheme by permitting organizations to leave some requests outstanding indefinitely, despite having a simple answer which could resolve the matter. Sections 25 through 30 were clearly drafted with the goal of creating a coherent framework to resolve requests for personal information, and in my view, an interpretation of s. 29 that serves, rather than undermines this goal better aligns with the legislative intent behind the provision.

[41] Finally, the circumstances of this review illustrate why an interpretation that focuses on the content of the individual's request, rather than the information under the control of an organization should be preferred. AB had a reasonable basis to believe that Epic Rides had his personal information under its control. If Epic Rides no longer had AB's personal information by the time he made his request, it could have resolved the issue by responding to his request within the time limits in s. 29. Instead, because it chose to ignore the request, AB's only recourse was to request a review from the OIPC. The result of which was that significant time, effort, and resources have been expended on this matter, all of which could have been avoided if Epic Rides had chosen to respond. An interpretation which permits organizations to ignore the timelines in s. 29 simply because they do not have an applicant's personal information would undermine

¹⁶ The 10 principles are schedule 1 to Canada's federal private sector privacy legislation, *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 (PIPEDA). The full text of principle 9 is found in schedule 1, s. 4.9 of PIPEDA.

the purpose of Part 8, introduce unnecessary delay and confusion, and waste the OIPC's resources. Such consequences are absurd and clearly not the intent.

[42] In my view, a textual and purposive interpretation of s. 29 reveals the Legislature chose to define and use the term “applicant” to ensure that the trigger for an organization's obligation to respond is the content of an individual's request. The purpose and scheme of Part 8 of PIPA support such an interpretation, and as the facts of this case illustrate, there are good, practical reasons for it. Accordingly, I find that Epic Rides was required to comply with s. 29 regardless of whether AB's personal information was under its control at the time he made his request.

Did Epic Rides fail to respond to the individual's request within the legislated timelines set out in s. 29 of PIPA?

[43] AB sent his request to Epic Rides on January 30, 2023. Section 29 provides that an organization must respond to an applicant within 30 days¹⁷ unless the conditions for an extension under s. 31 apply. Epic Rides does not assert that the conditions for a time extension under s. 31 applied in this case, and I am not satisfied that they did. Epic Rides' response was due on March 14, 2023. Epic Rides never responded to AB's request. Accordingly, I find that Epic Rides did not respond to the request in compliance with the time limit in s. 29(1).

[44] In summary, I am satisfied that Epic Rides had AB's personal information under its control at the time AB made his access request, and that Epic Rides failed to respond to AB's request within the timeline required by s. 29.

What is the appropriate remedy?

[45] The usual remedy in cases involving s. 29 of PIPA is to order the organization to respond to the applicant's access request, in accordance with ss. 28 and 30 of PIPA, by a particular date.¹⁸

[46] In assessing whether the circumstances of this case dictate a departure from the usual remedy, I considered the facts, positions of the parties, and the statutory scheme.

[47] While Epic Rides did not specifically address the issue of remedy, I considered its assertion that it has no information on AB, and in particular whether I should treat its submission in the inquiry as a “response” for the purposes of s. 29. Sections 28 and 30 of PIPA establish what is required of an organization when responding to a request from an applicant:

¹⁷ The calculation of days is based on the definition of “day” in s. 1 of PIPA.

¹⁸ See for example, Order P14-02, 2014 BCIPC 10 (CanLII) and Order P17-04, 2017 BCIPC 49 (CanLII) at para 8.

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.

Content of response

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.

(2) Despite subsection (1) (a), the organization may refuse in a response to confirm or deny the existence of personal information collected as part of an investigation.

[48] Epic Rides' bald assertion that it "has no information on [AB]" satisfies none of the requirements for a response. Accordingly, I find that Epic Rides has not responded to AB's request as required by PIPA, and accordingly, that its submission in the inquiry process does not warrant a departure from the usual remedy.

[49] AB argues that Epic Rides should be required to explain why it said seemingly inconsistent things about whether it has video and pictures of him. However, in my view, ordering Epic Rides to do so would not serve PIPA's purposes.¹⁹ Instead, I find that the appropriate remedy in this case to require Epic

¹⁹ PIPA's purposes are set out in s. 2.

Rides to respond to AB's request as required by PIPA, and particular by ss. 28 and 30. A response that complies with ss. 28 and 30 will answer the pertinent questions, namely whether Epic Rides currently has AB's personal information under its control and, if so, whether it will provide access or refuse access in accordance with the provisions of PIPA.

[50] For all these reasons, in my view, the appropriate remedy is to order Epic Rides to respond to AB's request in compliance with ss. 28 and 30 of PIPA and to do so by October 30, 2023. For the reasons set out above, I emphasize that the obligation to comply with this order applies regardless of whether Epic Rides now holds AB's personal information.

CONCLUSION

[51] For the reasons given above, I make the following orders under s. 52(3) and (4) of PIPA:

1. Epic Rides is required respond to the applicant's request. In doing so, Epic Rides must comply with ss. 28 and 30 of PIPA.
2. Epic Rides is required to copy the OIPC with its response.
3. Epic Rides is required to comply with the above orders by October 30, 2023.

September 15, 2023

ORIGINAL SIGNED BY

Allison J. Shamas, Adjudicator

OIPC File No.: P23-92655