

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER P2010-004

September 27, 2010

CALGARY CO-OPERATIVE ASSOCIATION LIMITED

Case File Number P1289

Office URL: www.oipc.ab.ca

Summary: The Complainant complained that his former employer, Calgary Co-operative Association Limited (“the Organization”), disclosed his personal information contrary to the *Personal Information Protection Act* (“the Act”). The Complainant also complained that the Organization did not make a reasonable effort to ensure that the information disclosed was accurate.

The Adjudicator found that the Organization did disclose the Complainant’s personal information to an employee at Employment Insurance, a federal program run by the Government of Canada. However, the Adjudicator found that the disclosure was authorized pursuant to the *Employment Insurance Act* and permitted pursuant to sections 19 and 20(b) of the Act.

The Adjudicator also found that the personal information that was disclosed was accurate; therefore, the Organization did not contravene section 33 of the Act.

Statutes Cited: **AB:** *Employment Insurance Act*, R.S.C. 1996 c. 23 ss. 51, and 88; *Employment Insurance Regulation*, S.O.R./96-332 s.19; *Personal Information Protection Act*, S.A. 2003, c. P-6.5 ss. 1(k), 4(2), 4(3), 7(1), 19, 20, 33, and 52.

Authorities Cited: **AB:** Order F2003-017.

I. BACKGROUND

[para 1] The Complainant was an employee of Calgary Co-operative Association Limited (“the Organization”). On October 29, 2008, a complaint was made by a customer who claimed that she witnessed the Complainant making rude gestures.

[para 2] The customer complaint led to a meeting on November 3, 2008, in which it was explained to the Complainant that the Organization would investigate the complaint and the Complainant could be disciplined if the allegations were true. The Complainant decided to resign his position with the Organization; therefore, an investigation was never completed to determine the accuracy of the customer complaint. The Complainant alleges that he was told that the information that would be kept on his employment file was that he performed a “dance”.

[para 3] Following his resignation, the Complainant attempted to secure employment with other companies. He states that the interviews would go well, and a start date would be determined, but that following the potential employer checking his work references (including the Organization) he would not hear from the potential employer again. He suspected that the Organization was disclosing information to potential employers that was making it difficult for him to secure employment.

[para 4] On November 19, 2008, the Complainant received a letter from the Vice President of Human Resources with the Organization. In that letter, the Vice President states that a customer complained about seeing the Complainant make rude gestures. He did not say that the Complainant was dancing. Instead, the Vice President used a term describing the rude gesture that the Complainant found offensive.

[para 5] On January 30, 2009, the Complainant’s claim for employment insurance was rejected apparently on the basis that he resigned from his employment with the Organization because he made rude gestures which were witnessed by a customer. According to the Complainant, the employee from Employment Insurance who contacted him to advise him that he would not be receiving employment insurance used the same term the Vice President used to describe the rude gesture.

[para 6] On April 7, 2009, the Complainant wrote to the Office of the Information and Privacy Commissioner (“this office”) and complained that the Organization had disclosed his personal information contrary to the Act. An investigation was authorized to attempt to resolve the issues between the parties but was not successful in doing so, and an inquiry was set. Both the Complainant and the Organization provided initial and rebuttal submissions.

II. ISSUES

[para 7] The Notice of Inquiry dated May 12, 2010 lists the issues for this inquiry as follows:

Issue A:

Is the Organization an active organization?

Issue B:

Did the Organization disclose “personal information” of the Complainant as that term is defined in the Act?

Issue C:

Is the disclosure excluded from the Act by virtue of section 4(2) or 4(3) of the Act?

Issue D:

Did the Organization disclose the information contrary to, or in compliance with, section 7(1) of the Act? In particular,

- 1. Did the Organization have the authority to disclose the information without consent, as permitted by sections 14, 17, or 20 of the Act?**
- 2. If the Organization did not have the authority to disclose the information without consent, did the Organization obtain the Complainant’s consent in accordance with section 8 of the Act before disclosing the information? In particular,**
 - a. Did the individual consent in writing or orally, or**
 - b. Is the individual deemed to have consented by virtue of the condition in section 8(2)(a) and (b) having been met? Or**
 - c. Is the disclosure permitted by virtue of the conditions in 8(3)(a), (b), and (c) having been met?**

Issue E:

Did the Organization disclose the information contrary to, or in accordance with, section 19(1) of the Act?

Issue F:

Did the Organization disclose the information contrary to, or in accordance with, section 19(2) of the Act?

Issue G:

Did the Organization make reasonable efforts to ensure the personal information of the Complainant disclosed to CEI was accurate and complete as required by section 33 of the Act?

[para 8] One of the Complainant's main concerns is that he feels the Organization did not comply with its collective agreement with his former union. This is not an issue over which I have jurisdiction, nor is it one that I will address. I will confine my findings to the issues listed above.

DISCUSSION OF ISSUES

A: Is the Organization an active organization?

[para 9] The Organization does not dispute that it was an active organization at the time of the disclosure.

B: Did the Organization disclose “personal information” of the Complainant as that term is defined in the Act?

[para 10] The Organization admits that it disclosed the Complainant's personal information to Canada Employment Insurance (“CEI”). Specifically, it disclosed that the Complainant resigned prior to the investigation of an allegation that could have resulted in his termination. The Organization also disclosed that the complaint being investigated was brought by a customer who had witnessed the Complainant make a rude gesture. This information is the Complainant's personal information within the terms of section 1(k) of the Act which states:

1(k) “personal information” means information about an identifiable individual;

[para 11] In his submissions, the Complainant indicates a suspicion that the Organization also disclosed his personal information to his potential employers. He bases this suspicion on the events described in paragraph 3 above. However, the Complainant has provided no direct evidence that the Organization did so. I do not believe that the sequences of events described by the Complainant and his theory that such disclosures were the reason for his failure to obtain employment with these employers are sufficient evidence to enable me to make findings that the Organization disclosed the Complainant's personal information to the potential employers.

[para 12] Therefore, for the remainder of this Order, I will deal only with the Organization's disclosure of the Complainant's personal information to CEI.

C: Is the disclosure excluded from the Act by virtue of section 4(2) or 4(3) of the Act?

[para 13] Section 4(2) of the Act states that the Act does not apply to public bodies and 4(3) of the Act outlines other circumstances in which the Act does not apply.

[para 14] The Organization submits that section 4(2) and 4(3) of the Act do not apply to the disclosure at issue. I agree and find that the disclosure of the Complainant's personal information was not excluded from the Act by virtue of section 4(2) or 4(3) of the Act.

D: Did the Organization disclose the information contrary to, or in compliance with, section 7(1) of the Act? In particular,

- 1. Did the Organization have the authority to disclose the information without consent, as permitted by sections 14, 17, or 20 of the Act?**
- 2. If the Organization did not have the authority to disclose the information without consent, did the Organization obtain the Complainant's consent in accordance with section 8 of the Act before disclosing the information? In particular,**
 - a. Did the individual consent in writing or orally, or**
 - b. Is the individual deemed to have consented by virtue of the condition in section 8(2)(a) and (b) having been met? Or**
 - c. Is the disclosure permitted by virtue of the conditions in 8(3)(a), (b), and (c) having been met?**

[para 15] Section 7(1) of the Act prohibits disclosure of an individual's personal information unless either consent is obtained from the individual or the Act otherwise permits the disclosure. The relevant portions of section 7(1) of the Act states:

7(1) Except where this Act provides otherwise, an organization shall not, with respect to personal information about an individual,

...

(d) disclose that information unless the individual consents to the disclosure of that information.

[para 16] Section 20 of the Act allows an Organization to disclose an individual's personal information without consent in specific circumstances. The portions of section 20 of the Act cited by the Organization state:

20 An organization may disclose personal information about an individual without the consent of the individual but only if one or more of the following are applicable:

...

(b) the disclosure of the information is pursuant to a statute or regulation of Alberta or Canada that authorizes or requires the disclosure;

(c) the disclosure of the information is to a public body and that public body is authorized or required by an enactment of Alberta or Canada to collect the information from the organization;

...

(f) the disclosure of the information is to a public body or a law enforcement agency in Canada to assist in an investigation

(i) undertaken with a view to a law enforcement proceeding, or

(ii) from which a law enforcement proceeding is likely to result;

...

(m) the disclosure of the information is reasonable for the purposes of an investigation or a legal proceeding;

...

[para 17] Following the Complainant's resignation from the Organization, the Organization completed a Record of Employment ("ROE") and sent the ROE to CEI as required by section 19 of the *Employment Insurance Regulations*. On the ROE, the Organization noted that the Complainant "Quit" and gave no further explanation.

[para 18] At some point after the ROE was sent into CEI, an employee of CEI contacted the Organization to obtain further details about the Complainant's resignation. I was provided with notes of the conversation taken by the employee of the Organization who spoke with the employee from CEI.

[para 19] The notes indicate that the CEI employee asked the Organization's employee to confirm that the Complainant was forced to resign. The Organization's employee stated that he was not forced to resign but chose to. The CEI employee then asked if the Complainant resigned in lieu of termination. The Organization's employee indicated that, at the time of the Complainant's resignation, it was conducting an investigation that could have resulted in termination. The CEI employee asked if the investigation was regarding misconduct to which the Organization's employee responded that there was an allegation of misconduct being investigated. The CEI employee asked what the allegations were. The Organization's employee responded:

...it was hard to describe the allegation as it was a motion. I added that if I had to put it into words it would be [a rude gesture] in front of a customer. I added that with any allegation we investigate further, which we were unable to proceed with as [the Complainant] resigned prior to the investigation.

[para 20] The CEI employee then asked if there was prior disciplinary action on the Complainant's file to which the Organization's employee responded "yes".

[para 21] The Complainant seems to argue that the Organization's employee is not credible. I have no reason to disbelieve the accuracy of the notes of the conversation between the Organization's employee and the CEI employee, and I accept her version of the conversation.

[para 22] Section 19 of *Employment Insurance Regulations* requires the Organization to disclose certain personal information, including the reason for issuing the ROE. Section 51 of the *Employment Insurance Act* ("EIA") allows CEI to give a claimant and an employer an opportunity to provide more information to CEI about the loss of employment should there be an indication that the loss of employment resulted from misconduct or that the claimant voluntarily left employment. Section 51 of the EIA states:

51. If, in considering a claim for benefits, the Commission finds an indication from the documents relating to the claim that the loss of employment resulted from the claimant's misconduct or that the claimant voluntarily left employment, the Commission shall

(a) give the claimant and the employer an opportunity to provide information as to the reasons for the loss of employment; and

(b) if the information is provided, take it into account in determining the claim.

[para 23] It was, presumably, under this section of the EIA that CEI contacted the Organization. Although this section does not require the Organization to make disclosures, it does, in my opinion, authorize disclosure of information regarding the reasons for the Complainant's loss of employment. Therefore, I find that section 20(b) of the Act allows the Organization to disclose information related to the reason for the Complainant's loss of employment to CEI. In Order F2003-017, the Adjudicator came to the same conclusion regarding section 51 of the EIA. He stated:

I accept the Public Body's argument that section 51 of the *Employment Insurance Act* authorizes employers to disclose personal information of ex-employees to HRDC officers processing claims...

(Order F2003-017 at para 33)

[para 24] The Organization also cited section 88 of the EIA in support of its argument that the EIA authorizes or requires collection by CEI, and disclosure by the Organization. Section 88 of the EIA states:

88. (1) An authorized person may, at any reasonable time, for any purpose relating to the administration or enforcement of this Act, inspect, audit or examine any document that relates or may relate to the information that is or should be contained in the records or

books of account or to the amount of any premium payable under this Act and, for those purposes, the authorized person may

- (a) *subject to subsection (2), enter any premises or place where any records or books of account are or should be kept; and*
- (b) *require the owner, occupant or person in charge of the premises or place to give the authorized person all reasonable assistance and to answer all proper questions relating to the administration or enforcement of this Act and, for that purpose, require the owner, occupant or person in charge to attend at the premises or place with the authorized person.*

[para 25] While I agree that section 88 of the EIA requires disclosure by an employer of certain information, I do not have evidence that the CEI employee that collected the information, was an “authorized person” and therefore, I cannot find that section 88 of the EIA applies to the facts in this inquiry.

[para 26] As I have found that the Organization was authorized to disclose the Complainant’s personal information in accordance with section 20(b) of the Act (disclosure pursuant to a statute authorizing or requiring disclosure), I will not discuss the application of sections 20(c), (f), (m) or 8 of the Act.

E: Did the Organization disclose the information contrary to, or in accordance with, section 19(1) of the Act?

F: Did the Organization disclose the information contrary to, or in accordance with, section 19(2) of the Act?

[para 27] Section 19 of the Act allows organizations to disclose personal information only for purposes that are reasonable and only to the extent that is necessary to meet the purpose of the disclosure. Section 19 of the Act states:

19(1) An organization may disclose personal information only for purposes that are reasonable.

(2) Where an organization discloses personal information, it may do so only to the extent that is reasonable for meeting the purposes for which the information is disclosed.

[para 28] The Organization’s purpose in disclosing the Complainant’s personal information was to meet its perceived obligations under the EIA and Regulations. As I stated above, section 51 of the EIA does not require the Organization to disclose personal information. However, I do believe that assisting EIA in administering the Complainant’s employment insurance claim is a reasonable purpose for this disclosure.

[para 29] The part of the disclosure that the Complainant seems to take issue with is the content of the information disclosed. The Complainant does not agree with the Organization disclosing that a customer complained about him making a rude gesture

and, specifically, does not agree with the term used by the Organization to describe the rude gesture to CEI.

[para 30] As I will discuss further below, the term used to describe the rude gesture allegedly witnessed by a customer was the same term used by the customer in her complaint. Given that the reason for the Complainant's loss of employment (even if it was voluntary) can affect his entitlement to employment insurance (see section 51 of the EIA), I find that the information disclosed by the Organization was reasonable for the purpose, as all the information was needed by CEI in order to assess the Complainant's entitlement to employment insurance.

[para 31] Therefore, I find that the Organization complied with section 19 of the Act when it disclosed the Complainant's personal information to CEI.

G: Did the Organization make reasonable efforts to ensure the personal information of the Complainant disclosed to CEI was accurate and complete as required by section 33 of the Act?

[para 32] Of all the issues over which I have jurisdiction, the issue of whether the information disclosed by the Organization to CEI was accurate seems to be the primary concern of the Complainant. However, the Complainant's main concern seems to be the offensive term used to describe the rude gesture he was accused of having made in front of a customer.

[para 33] Section 33 of the Act states:

33 An organization must make a reasonable effort to ensure that any personal information collected, used or disclosed by or on behalf of an organization is accurate and complete.

[para 34] The information disclosed to CEI (as outlined above) was that there was an *allegation* of misconduct and the *allegation* involved the Complainant making a rude gesture in front of a customer. In the evidence of the Organization's employee, which I accept, the Organization never stated that the Complainant actually did make the rude gesture, only that there was an allegation that he did.

[para 35] The Organization provided me with a copy of the customer complaint. It appears to be an e-mail in which the customer's personal information has been severed. The e-mail clearly alleges that the customer witnessed the Complainant make a rude gesture. The customer uses the term that the Complainant finds offensive to describe the rude gesture. The term used by the customer to describe the rude gesture is the same term used by the Organization's employee when she disclosed the allegation to CEI.

[para 36] In his submissions, the Complainant accuses the Organization of fabricating the customer complaint. He bases this accusation on the fact that the customer complaint was not provided to him as part of the bulk of the records he received from the Organization as the result of an access request, but was provided later. He also

states that when he was initially told of the customer complaint, he was told that the customer was a “little old lady”; later, he was told that it was a customer and a witness; and finally, he was told that the customer was a mother with her young child. The Complainant feels that this inconsistency points to the fact that the Organization is not being truthful regarding the details of the customer complaint.

[para 37] I do not find the Complainant’s arguments regarding the fabrication of the customer complaint compelling. As far as I know, the Organization had no reason to fabricate the complaint I was provided. I accept that a customer complained about witnessing the Complainant making a rude gesture. I also accept that the copy of the customer complaint provided to me by the Organization is, in fact, the complaint the customer made, which led to the meeting of November 3, 2008, in which the Complainant resigned.

[para 38] Therefore, as the information the Organization disclosed was that there was an allegation made by a customer that she witnessed the Complainant make a rude gesture, the details of which were the same and using the same language as that given by the customer in her complaint, I find that the Organization disclosed accurate information to CEI. As I have found that the information as to the details of the complaint was accurate, there is no need to decide if the Organization made a reasonable effort to determine if the information was accurate.

V. ORDER

[para 39] I make this Order under section 52 of the Act.

[para 40] I find that the Organization disclosed the Complainant’s personal information in accordance with sections 19, 20 and 33 of the Act.

Keri H. Ridley
Adjudicator