

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER P2010-013

November 29, 2010

CALGARY CO-OPERATIVE ASSOCIATION LIMITED

Case File Number P1339

Office URL: www.oipc.ab.ca

Summary: Pursuant to the *Personal Information Protection Act* (“the Act”), the Applicant, a former employee of the Calgary Co-operative Association Limited (“the Organization”), requested access to records containing his personal information. The Organization responded, by providing records to the Applicant that were responsive to his request. The Applicant felt that he had not been provided with all of the responsive records, and asked the Office of the Information and Privacy Commissioner to review the Organization’s response.

The Adjudicator found that the Organization had responded fully and accurately to the Applicant’s request and that, despite the arguments of the Applicant, there were no other responsive records. However, the Adjudicator did find that the Organization’s response to the Applicant ought to have stated that he was being given access to all responsive records.

Statutes Cited: **AB:** *Personal Information Protection Act*, S.A. 2003, c. P-6.5 ss. 1(k), 27, 29, and 52.

Authorities Cited: **AB:** Order P2010-004.

I. BACKGROUND

[para 1] The Applicant is a former employee of the Calgary Co-operative Association Limited (“the Organization”). On October 29, 2008, he was accused of performing a rude gesture in front of a customer (“the complaint”). This led to a meeting on November 3, 2008, between the Applicant, his union, and the Organization. As a result of the meeting, the Applicant chose to resign his employment rather than becoming the subject of an investigation by the Organization into the complaint.

[para 2] On March 18, 2009, pursuant to the *Personal Information Protection Act* (“the Act”), the Applicant requested from the Organization:

...copies of any and all documentation pertaining to me, [the Applicant], including my personnel file, any correspondence that is in regard to, or has my name on it, and reports, etc. be sent to the following, my address...

[para 3] On April 24 and May 4, 2009, the Organization responded to the Applicant’s request, providing records containing the Applicant’s personal information.

[para 4] On June 7, 2009, the Applicant requested that the Office of Information and Privacy Commissioner (“this office”) review the Organization’s response. The Commissioner authorized a portfolio officer to review this matter in an attempt to settle the issues between the parties, but this was unsuccessful. The Applicant requested an inquiry on September 27, 2009.

[para 5] Both the Applicant and the Organization, through their respective representatives, provided initial and rebuttal submissions.

II. RECORDS AT ISSUE

[para 6] At issue are any records containing the personal information of the Applicant that are in the custody or control of the Organization.

III. ISSUES

[para 7] The Notice of Inquiry dated June 18, 2010 sets out the issues for this inquiry as follows:

Issue A:

Is the access request for the Applicant’s personal information?

Issue B:

Is the Applicant's personal information in the Organization's custody or control?

Issue C:

Did the Organization comply with section 27 of the Act (duty to assist, including duty to conduct an adequate search for responsive records)?

Issue D:

Did the Organization comply with section 29 of the Act (contents of response)?

[para 8] The Applicant also raised issues relating to the disciplinary procedure followed by the Organization during the entire course of his employment with the Organization, issues surrounding a Labour Relations Board hearing involving the Applicant and the Organization, the Organization's disclosure of his personal information to Canada Employment Insurance, and the terminology used by the Organization to describe the rude gesture complained about. The Organization's disclosure of the Applicant's personal information was dealt with in Order P2010-004. The other issues raised by the Applicant are beyond the scope of this inquiry and not related to the issues noted above. Therefore, I will confine my discussion and findings to only those issues noted in the Notice of Inquiry.

IV. DISCUSSION OF ISSUES

A: Is the access request for the Applicant's personal information?

[para 9] Section 1(k) of the Act defines personal information as follows:

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

[para 10] Although some aspects of the Applicant's request may refer to information that may not be his personal information, I find that his request contained a request for his personal information.

B: Is the Applicant's personal information in the Organization's custody or control?

[para 11] The Applicant's personal information was in the custody and control of the Organization.

C: Did the Organization comply with section 27 of the Act (duty to assist, including duty to conduct an adequate search for responsive records)?

[para 12] Section 27 of the Act states:

27(1) An organization must

(a) make every reasonable effort

(i) to assist applicants, and

(ii) to respond to each applicant as accurately and completely as reasonably possible,

and

(b) at the request of an applicant provide, if it is reasonable to do so, an explanation of any term, code or abbreviation used in any record provided to the applicant or that is referred to.

(2) An organization must, with respect to an applicant's personal information, create a record for the applicant if

(a) the record can be created from a record that is in electronic form and that is under the control of the organization, using its normal computer hardware and software and technical expertise, and

(b) creating the record would not unreasonably interfere with the operations of the organization.

[para 13] The Organization submits that it searched for records responsive to the Applicant's request, and provided him with access to all of the records it had that were responsive to his request.

[para 14] The Applicant submits that the Organization did not provide him with access to all of his personal information in the Organization's custody or control. He states that one record was a poor copy and difficult to read. He also believes that there are records missing, such as a written notice to his union notifying the union of the November 3, 2008 meeting. As well, he feels that other records which would have been created during and following the meeting on November 3, 2008 ought to exist. Specifically, he feels that there ought to have been notes created as the result of the meeting, as well as other documentation which uses a particular term to describe the rude gesture complained about.

[para 15] In support of his allegation, the Applicant states that there is no reference in the records to which he was given access to the term used by an employee of the Organization in a letter to him dated November 19, 2008, and that was used by an employee of Canada Employment Insurance in both a telephone message and correspondence that related to his claim following his resignation. The Applicant

believes that there are other records that are being withheld or that have been destroyed by the Organization which use this particular term, presumably on the basis that some documentation of the term would have been the source from which it was communicated to the Canada Employment Insurance employee.

[para 16] In its initial submissions, the Organization provided a clearer copy of the illegible record the Applicant has complained about. As well, the Organization provided a copy of the customer complaint which led to the meeting of November 3, 2008. This record was provided to the Applicant in response to his access request. The customer who made the complaint used the same terminology as appeared in the November 19, 2008 letter and as was used by the Canada Employment Insurance employee referred to above. I believe that this is the source of the term used to describe the rude gesture that the Complainant finds offensive.

[para 17] The Applicant submits that the customer complaint was fabricated by the Organization after the fact. In support of this allegation the Applicant states that there were no customers present at the time he performed the rude gesture, his union does not have a copy of the customer complaint, and the Organization's story as to who the customer was has changed, initially having been described as a "little old lady", and later as a "mother with a young child".

[para 18] The Organization explained that the union was given oral notice of the November 3, 2008 meeting, and that it did not provide a copy of the customer complaint to the his union because the Applicant admitted to making the rude gesture, and had resigned prior to an investigation. The Organization does admit that there are discrepancies as to the way in which different employees of the Organization described the customer who complained, but states that this does not lead to the conclusion that the complaint was fabricated. As well, the Organization rightly points out that if there had not been a customer complaint, and the Applicant's version of events were accurate (that there were no customers present and all individuals involved thought the rude gesture was amusing) the Organization would not have been made aware of the rude gesture.

[para 19] As I found in Order P2010-004, I do not agree with the Applicant that the customer complaint was fabricated by the Organization. I believe it likely that the customer complaint was the source of the term used by the Organization in its letter of November 19, 2008 and by the employee of Canada Employment Insurance to describe the rude gesture.

[para 20] I also accept the Organization's submission that it provided the Applicant with access to all of the records responsive to his request. I do not find the Applicant's arguments regarding the existence of further records compelling. I accept the Organization's evidence that there were no other records created as a result of the November 3, 2008 meeting, and find that the Organization has provided the Applicant will access to all records in its possession that are responsive to his request. Therefore, I find that the Organization fulfilled its duties under section 27 of the Act.

D: Did the Organization comply with section 29 of the Act (contents of response)?

[para 21] Section 29 of the Act states:

29 In a response to a request made under section 24, the organization must inform the applicant

(a) as to whether or not the applicant is entitled to or will be given access to all or part of his or her personal information,

(b) if the applicant is entitled to or will be given access, when access will be given, and

(c) if access to all or part of the applicant's personal information is refused,

(i) of the reasons for the refusal and the provision of this Act on which the refusal is based,

(ii) of the name of the person who can answer on behalf of the organization the applicant's questions about the refusal, and

(iii) that the applicant may ask for a review under section 46.

[para 22] The Organization's response dated April 24, 2009 states, "Enclosed for you are the documents you requested pursuant to the *Personal Information Protection Act*." The Organization's response dated May 4, 2009 states:

Enclosed for you is an additional document we located which was relevant to your Personal Information Protection Act request of Calgary Co-op. Certain information has been removed from this document to protect the customer's privacy.

[para 23] The only information which appears to have been severed by the Organization is the contact information of the customer who made the complaint.

[para 24] Although, the Organization did sever the name and contact information of the customer who complained about the Applicant's rude gesture, this information is not the Applicant's personal information, it is the personal information of the customer. Therefore, assuming this is the only information severed, section 29(c) of the Act does not apply.

[para 25] I have no information that indicates that any other information was severed or withheld by the Organization.

[para 26] However, section 29 of the Act requires the Organization to tell the Applicant whether he is being given access to all or part of his personal information.

That being said, in its submissions, the Organization does state that the Applicant was given access to all records responsive to his request. Therefore, I find that even though the Organization failed to comply with section 29(a) of the Act it has since rectified its breach. Section 29(b) of the Act (which requires notification as to when access will be given) is not applicable, as the Organization attached copies of all of the responsive records to its letters.

V. ORDER

[para 27] I make this Order under section 52 of the Act.

[para 28] I find that the Organization complied with section 27 of the Act.

[para 29] I find that the Organization failed to comply with section 29(a) of the Act but has since rectified the breach.

Keri H. Ridley
Adjudicator