

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER P2010-014

November 29, 2010

IMPERIAL OIL LIMITED

Case File Number P1313

Office URL: www.oipc.ab.ca

Summary: The Complainant complained that information collected by his employer, Imperial Oil Limited (“the Organization”), contained in a disciplinary letter dated December 22, 2008, was not accurate and that the Organization failed to take reasonable efforts to ensure that it was accurate and complete, contrary to section 33 of the *Personal Information Protection Act* (“the Act”).

The Adjudicator found that the limited information that was collected by the Organization and contained in the disciplinary letter of December 22, 2008 was accurate and complete; therefore, there was no need for her to examine if the Organization made reasonable efforts to ensure that the information was accurate and complete.

Statutes Cited: **AB:** *Personal Information Protection Act*, S.A. 2003, c. P-6.5 ss. 1(k), 33 and 52.

I. BACKGROUND

[para 1] The Complainant is an employee of Imperial Oil Limited (“the Organization”). On December 18, 2008, a disagreement between the Complainant and his manager occurred which resulted in the Organization issuing to the Complainant a “Letter of Disciplinary Written Reprimand” dated December 22, 2008 (“disciplinary letter”).

[para 2] Before to issuing the letter of reprimand to the Complainant, a representative from the Human Resources department of the Organization and a member of the management of the Organization met with the Complainant to discuss what had occurred. According to the Human Resources representative, the Complainant agreed with the facts of what had happened and that his behavior was inappropriate.

[para 3] The Complainant, in fact, did not agree that his behavior had been inappropriate, and asked that the disciplinary letter be removed from his personnel file, or, alternatively, that a copy of his version of events be attached to the letter. The Organization kept the disciplinary letter on the Complainant's personnel file, but added a copy of an e-mail sent by the Complainant describing the events of December 18, 2008 as he saw them.

[para 4] On May 4, 2009, the Complainant made a complaint to the Office of the Information and Privacy Commissioner ("this office") stating, "[the Organization] did not make a reasonable effort to ensure that information in my personal [*sic*] file was accurate & complete. They put on my file a letter of discipline without any investigation."

[para 5] The Commissioner assigned a portfolio officer to investigate and attempt to resolve the issues between the parties, but this was unsuccessful. The Complainant requested an inquiry, which the Commissioner authorized. Both the Complainant and the Organization made initial and rebuttal submissions.

II. INFORMATION AT ISSUE

[para 6] The information at issue is the Complainant's personal information contained in the disciplinary letter of December 22, 2008.

III. ISSUES

[para 7] The Notice of Inquiry issued for this inquiry defines the issues as follows:

Issue A:

Did the Organization collect "personal information" of the Complainant as that term is defined in the Act?

Issue B:

Did the Organization make reasonable efforts to ensure the personal information of the Complainant collected about him and contained in the letter was accurate and complete as required by section 33 of the Act?

[para 8] In his initial submission, the Complainant discusses the accuracy of another letter of reprimand issued by the Organization after his complaint to this office. "The letter" referred to in Issue B is the disciplinary letter of December 22, 2008. The

Complainant states that this second letter is relevant as it shows that the Organization consistently does not follow its own processes and, therefore, consistently does not take reasonable steps to ensure that the information it collects is accurate.

[para 9] Compliance with section 33 of the Act does not require an organization to establish a strict set of written procedures. An organization may be well advised to have a sound, procedurally fair set of procedures in place that ensure that personal information collected, used, and disclosed is accurate and complete should a complaint be made to this office. However, what I must decide in a given case is whether on the facts in that case, the organization made reasonable efforts to ensure the personal information collected, used, or disclosed was accurate and complete.

[para 10] Therefore, the scope of this inquiry does not extend to making findings regarding the Organization's creation of or adherence to general procedures. The issue in this inquiry is whether the Organization complied with section 33 of the Act with reference to the disciplinary letter of December 22, 2008. The subsequent letter from the Organization to the Complainant is not at issue in this inquiry, and I will restrict my findings to the letter of December 22, 2008.

IV. DISCUSSION OF ISSUES

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

[para 11] Personal information is defined in the Act as:

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

[para 12] The information collected by the Organization was information about an incident involving a disagreement between the Complainant and his manager. The information was about an identifiable individual (the Complainant) and is, therefore, the Complainant's personal information.

B: Did the Organization make reasonable efforts to ensure the personal information of the Complainant collected about him and contained in the letter was accurate and complete as required by section 33 of the Act?

[para 13] Section 33 of the Act requires an organization to make a reasonable effort to ensure the personal information it collects is accurate and complete. 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 14] The information the Complainant is concerned about is the information in the disciplinary letter of December 22, 2008. The letter states:

This letter will serve to confirm and document our conversations on December 18, 2008. Following our meetings, I sent you an e-mail note in which I informed you that you would be receiving a disciplinary written reprimand for inappropriate and disrespectful behavior toward management.

As discussed last Thursday the following behavior is unacceptable:

- Loudly announcing that you will not listen to management and bringing earplugs to our meeting.

This behavior is especially intolerable given it occurred immediately following a staff meeting where the expectations regarding professional behavior and proper business conduct were discussed. Your action was in clear violation of our company's expectations regarding a positive and respectful workplace.

Any repetition of this conduct will lead to further disciplinary action. Should you have questions or concerns regarding company policies and expectations, please meet with me or any other management representative. As an employee you have a clear responsibility to respect management.

Please govern yourself accordingly.

If you are uncertain about the standard expected of you, please seek clarification from me or your supervisor so that we may avoid further discipline.

Please sign the enclosed copy of this letter to confirm your understanding of this warning. This letter will remain in your permanent employee file.

[para 15] The letter was signed by the Complainant's manager but not by the Complainant. There is a note on the bottom of the letter indicating that the Complainant "declined to sign" the letter.

[para 16] In the Complainant's e-mail to the Organization, which the Organization appended to the disciplinary letter in the Complainant's personnel file, he states, "...I did say that I needed some ear plugs, since I was not going to listen to him." Therefore, this portion of the disciplinary letter is accurate. The Complainant also does not seem to take issue with the accuracy of this portion of the disciplinary letter.

[para 17] However, the Complainant does take issue with the fact that, in the disciplinary letter, the Organization describes his conduct as being inappropriate, disrespectful, and contrary to the Organization's expectations. He feels that the Organization did not investigate the matter properly or at all, and did not take into account his version of events before it issued the disciplinary letter. The Organization states that a representative of the Organization did meet with the Complainant and that during that meeting, he agreed to the statement about his conduct and that it was

inappropriate. The Complainant states that he never agreed that his conduct was inappropriate.

[para 18] Therefore, the main point in the disciplinary letter with which the Complainant takes issue seems to be the description of his conduct as being inappropriate rather than the description that he loudly announced that he would not listen to management and brought ear plugs to the meeting.

[para 19] Throughout his submissions, the Complainant raises employment issues that are not related to the complaint before this office. It is clear from his submissions that the Complainant has a number of concerns including: inadequacies in the Organization's procedures and policies in general; that he was not informed about an appeal procedure; that the Organization does not properly address employee complaints; and that he was not treated properly by his manager on several occasions. The Complainant seems to be under the impression that a complaint to this office can resolve these employment issues. In his initial submissions he states:

If I was a member of the wage group I would have some recourse in that their bargaining agreement give [*sic*] them the right to bring the issue to arbitration. Then the issue is heard by a company representative, employee representative and a third mutually agreed upon representative. Being part of the salary group I do not have any recourse like this.

...I am glad I found out about your Office for if not for your Office I would have no way in seeking fairness.

[para 20] The scope of this inquiry and of my jurisdiction is limited to the question of whether the Organization met its obligation relating to accuracy and completeness under the Act. It is clear that the Complainant does not feel that he was in the wrong or deserving of the disciplinary letter; however, my jurisdiction does not extend to deciding an employment dispute and making a finding about whether the Complainant's conduct was inappropriate, disrespectful, and contrary to the Organization's expectations.

[para 21] In this inquiry I must decide if the information collected by the Organization was accurate and complete and if it was not, if the Organization made all reasonable efforts to ensure that it was accurate and complete.

[para 22] There are two distinct items of information compiled by the Organization in the disciplinary letter. The first is that the Complainant loudly stated that he was not going to listen and brought ear plugs to the meeting. The information consists of the facts of what happened, which the Complainant admits to in his e-mail. Although there may have been some prior tension between the Complainant and his manager that led to a confrontation, I find, particularly having regard to the Complainant's acknowledgment of this occurrence, that this information is accurate and complete; therefore, I do not need to decide if the Organization made all reasonable efforts to ensure that the information was accurate.

[para 23] Furthermore, when the Complainant indicated his disagreement with the disciplinary letter, the Organization agreed to attach the Complainant's version of events to the disciplinary letter. As I explained above, I do not find that the facts of the incident as described in the Complainant's e-mail differ significantly from the description of those facts found in the disciplinary letter. Therefore, if I am incorrect that the facts in the disciplinary letter are accurate, I would still find that, based on the forgoing, the Organization made reasonable efforts to ensure that the information it compiled in the disciplinary letter was accurate and complete.

[para 24] The second item of information that is at issue in this inquiry is the Organization's opinion that the Complainant's behaviour was inappropriate. As I stated above, it is this information that the Complainant suggests is inaccurate. Section 33 of the Act speaks to an organization's obligations respecting the accuracy of information that it collects, uses, or discloses. In this case the information consisting of the Organization's opinion about the Complainant's behaviour was information created by the Organization. Possibly, in recording this opinion in the disciplinary letter, the Organization could be said to have been "collecting" the opinion, or possibly this action might be better termed a "use" by the Organization. It is also possible the disciplinary letter may at some point be disclosed. The significant point is that the Organization formed the opinion, and because it held this opinion, it cannot be said to be inaccurate. The question with respect to accuracy in this case is not whether the Organization should have formed the opinion, but whether it did so. As the Organization decided that the Complainant's actions were inappropriate, then what is in the disciplinary letter is in fact an accurate recording of the opinion, and is accurate for the purposes of section 33 of the Act.

[para 25] Therefore, I find that the information collected by the Organization was accurate.

V. ORDER

[para 26] I make this Order under section 52 of the Act.

[para 27] I find that the Organization complied with section 33 of the Act.

Keri H. Ridley
Adjudicator