ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER P2012-09

October 31, 2012

PRO-WESTERN PLASTICS LTD.

Case File Numbers P1662 & P1663

Office URL: www.oipc.ab.ca

Summary: An individual made a request to her former employer, Pro-Western Plastics Ltd. (the Organization), for her "personal file and any other documents related to [her] employment." The Applicant also specifically requested any information that a named employee of the Organization may have concerning the Applicant's shift concern forms or WCB letters; as well as information that another named employee of the Organization may have had concerning the Applicant.

The Organization provided approximately 1100 pages of records to the Applicant, with information severed under the exception to access for personal information of third parties. The Organization charged the Applicant $396.50 for the records. After the Applicant noted that some information appeared to be missing from the records provided, the Organization conducted a further search and found an additional nine pages of responsive records. The Organization notified the Applicant of these additional records and stated that the records would be available once the Applicant paid the $25 fee; at the time of the inquiry the Applicant had not picked up (or paid for) the additional records.

The Applicant requested a review of the Organization's severing of the records, as well as the fees charged.

The Adjudicator found that many of the records provided to the Applicant did not contain the Applicant's personal information and as such were not responsive to the request under PIPA. The Adjudicator also found that the Organization improperly applied the

exception to access for personal information of third parties in many of the records. The Adjudicator ordered the Organization to refund part of the fees paid by the Applicant, specifically fees paid for photocopying and severing information from records that did not contain the Applicant's personal information, as well as fees for severing information pursuant to an exception to access that could not reasonably be applied to that information.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, s. 10, Freedom of Information and Protection of Privacy Regulation, Alberta Regulation 186/2008, Schedule 2, *Personal Information Protection Act*, S.A. 2003, c. P-6.5, ss. 1, 19, 20, 24, 27, 32, 32(1.1), 52.

Authorities Cited: AB: Orders 2001-013, F2003-001, F2003-009, F2012-06, P2006-005, P2007-002, P2009-009, P2011-002, P2011-014.

I. BACKGROUND

[para 1] On April 26, 2010, an individual made a request to her former employer, Pro-Western Plastics Ltd. (the Organization), for her "personal file and any other documents related to [her] employment." The Applicant also specifically requested any information that a named employee of the Organization may have concerning the Applicant's shift concern forms or WCB letters; as well as information that another named employee of the Organization may have had concerning the Applicant. The Applicant's request did not specify that she was making the request pursuant to the *Personal Information Protection Act* (PIPA).

[para 2] The Organization responded by letter dated May 5, 2010, informing the Applicant that PIPA permitted an organization to charge reasonable fees for providing personal information. The Organization estimated the fees for the information requested by the Applicant to be $200. It required a deposit of $50 to begin processing the request, which the Applicant paid on May 10, 2010. On June 14, 2010, the Organization sent another letter to the Applicant, extending the deadline for providing the requested information by 30 days. The reasons given by the Organization were that there was a large number of records and the Organization was consulting with counsel as well as with the WCB concerning whether records related to the Applicant's WCB claim could be provided to the Applicant by the Organization. The new anticipated date given by the Organization for responding to the Applicant's request was July 15, 2010.

[para 3] A further letter was sent to the Applicant by the Organization dated July 12, 2010, indicating that the records were ready for the Applicant, and that fees of $346.50 were owed by the Applicant (in addition to the $50 deposit already paid) before the records would be provided.

[para 4] The Applicant paid the fees by cheque dated July 15, 2010, and received over 1000 pages of records, many of which had information severed with no explanation. By letter dated August 4, 2010, the Applicant indicated to the Organization that some information requested by the Applicant had not been included in the package of records

provided; specifically, the Applicant was seeking "shift concern" forms, and any letters received from or sent to WCB regarding her injuries. She also noted that she had received payroll information and "glove purchase" forms that she had neither expected nor wanted.

[para 5] On August 31, 2010, the Organization informed the Applicant, by letter, that some of the missing information had been located, but that the WCB records had all been provided to the Applicant. The Organization also informed the Applicant that a further $25 would have to be paid by the Applicant for locating, retrieving and copying these records. The Applicant did not pick up these records from the Organization.

[para 6] The Applicant made a request to this office to review the Organization's response to her request. She also asked that this office review the fees charged by the Organization for the records.

II. INFORMATION AT ISSUE

[para 7] The information at issue is the information severed in the 1110 pages of records provided to the Applicant. The issues concerning fees and the Organization's duty to assist the applicant relate to these records, as well as the nine pages of records prepared by the Organization but not picked up by the Applicant.

III. ISSUES

[para 8] The Notice of Inquiry states the issues for inquiry as the following:

1. **If the Organization refused to provide access to the Applicant's personal information in its custody or control, did it do so in accordance with section 24(3) (mandatory grounds for refusal) or with section 24(4)(severing personal information of others) of the Act? In particular,**

    a. **Does section 24(3)(b) (information revealing personal information about another individual) apply to certain requested records or parts thereof?**

    b. **If the withheld records consist of the personal information of the Applicant and if section 24(3)(b) applies to these records, is the Organization reasonably able to sever the information to which these sections apply and provide the personal information of the Applicant as required by section 24(4)?**

2. **Did the Organization comply with section 27(1)(a) of the Act (duty to assist, including duty to conduct an adequate search for responsive records)?**

3. **Did the Organization properly apply section 32(1) (reasonable fees) of the Act? If not, should the fees be reduced/waived?**

IV. DISCUSSION OF ISSUES

Preliminary issue – is the information responsive to the Applicant's request for her personal information?

[para 9] Recent amendments to PIPA came into force on May 1, 2010. As the Applicant's access requests were made prior to the amendments, the previous version (i.e. the version in force immediately prior to the May 2010 amendments) apply.

[para 10] Personal information is defined in section 1(k) of the Act (now section 1(1)(k)), which reads as follows:

> *1 In this Act,*
>
> ...
>
> *(k) "personal information" means information about an identifiable individual;*
>
> ...

[para 11] The Applicant stated that she received, in response to her request, payroll information and glove purchase forms that she had neither expected nor wanted. The Organization responded that the Applicant requested all information related to her employment from the Organization. I agree that the Applicant's request was sufficiently broad to encompass payroll and glove purchase forms.

[para 12] The Organization made it clear to the Applicant that it was processing her request under PIPA. Under PIPA, an individual may request access only to his or her *personal information* in the custody or control of an organization. In my view, a significant portion of the records (approximately 25% of the records) were records of information that was not the Applicant's personal information. Most of this information is work product information that cannot be requested under PIPA. A few pages of this 25% are not properly categorized as work product, but also do not contain the Applicant's personal information, for example, blank WCB forms and blank forms of the Organization (pages 1038, 1039, 1091 – 1094), and fax transmission forms that show only whether an unidentified fax was successfully sent (pages 930, 946, 949, 968, 971, 993, 1008, 1012, 1021, 1026, 1040, 1044, 1058, 1077. 1097, 1101).

[para 13] I note also that pages one to five of the package of records provided to me by the Organization are dated or created after the date of the Applicant's request: for example, page one is a copy of the Organization's letter to the Applicant regarding the fee estimate for the Applicant's request and the required deposit (with the author's name and signature severed). The Applicant's request did not indicate that she was requesting any information created or dated after her request, so these pages are not responsive to the request.

[para 14] With respect to the work product information, past Orders have distinguished between an employee's personal information and "work product" information. In Order P2006-005 the Commissioner stated:

> In Order P2006-004, I considered the meaning of "personal information about an individual" within the meaning of the Act:
>
> The Act defines "personal information" as "information about an identifiable individual". In my view, "about" in the context of this phrase is a highly significant restrictive modifier. "About an applicant" is a much narrower idea than "related to an Applicant". Information that is generated or collected in consequence of a complaint or some other action on the part of or associated with an applicant – and that is therefore connected to them in some way – is not necessarily "about" that person.
>
> This reasoning applies equally to an individual's work, which may be associated with an individual, but is not necessarily about the individual who performed the work.
>
> …
>
> I agree with the Organization's position that the "work product" or records produced by an employee in the course of employment is generally not the personal information of the employee. Pipeline reports, asset allocation reports, client agreements, tapes of calls, customer satisfaction and referrals are records created by employees as a part of their employment duties. These records are not about the employee as an individual, but about the task at hand.

[Order P2006-005, at paras. 46-47, 50. See also Orders P2009-009 at para. 26, and P2011-002, at paras. 13-14]

[para 15] As noted, some of the records provided to the Applicant contain no information at all about her; the fact that these records may have been located in the Applicant's personnel file does not necessarily mean that they contain her personal information under PIPA. Even the records that contain the Applicant's name are not subject to an access request under PIPA where they contain no "personal dimension." For example, as the Applicant's position with the Organization required certain safety training, some of the records provided to the Applicant by the Organization were training materials (for example, pages 622-649 consist of an operator training manual). The Organization's training manuals cannot be characterized as the Applicant's personal information. This is the case even in the instances wherein the training materials included quizzes with the Applicant's answers, as well as her signature affirming that she had read the materials, as there is no personal dimension to the information in these records. I make the same finding with respect to copies of organization-wide policy memos and records of work-related meetings and attendance at those meetings.

[para 16] Shift-related information, such as voluntary leave forms (signed when an employee voluntarily leaves early due to lack of work), and shift change forms (signed by two employees switching shifts) is also not the Applicant's personal information. A record showing that an employee worked on a particular day does not reveal information that has a personal dimension such that it is personal information about that employee.

Although these records show that the Applicant left a shift early or changed a scheduled shift, in my view, this information is better characterized as information *about* the Applicant's work or position, rather than *about* the Applicant. The same is true regarding the names of coworkers on the shift change forms and other shift-related records (daily schedules on pages 238, 1095 and 1096, and a letter denying a request to change shifts on page 411). (In saying this I acknowledge that there may be other situations in which shift-related information has a personal dimension).

[para 17] In my view, the above-described records are the Applicant's work product; neither these records nor the blank forms and fax transmission forms described above are records to which the Applicant can request access under PIPA. An organization may, of its own volition or pursuant to another process, provide access to information that is not personal information; however, that process is not subject to PIPA and therefore the organization's response would not be reviewable by this office, nor do the provisions under PIPA concerning fees apply.

[para 18] The following is a list of pages that do not contain information that may be requested under PIPA, for the reasons above:

44-55, 67-82, 96, 101, 104, 106, 108, 111-122, 126, 128-129, 131, 143, 156, 157, 189, 193, 197-207, 212, 215, 218, 221, 222, 232-234, 238, 245, 256-7, 266-71, 276, 277, 284-94, 301-304, 307, 308, 310, 313, 314, 317, 326, 329, 330, 337, 344, 347, 353, 354-71, 373, 375-6, 378, 379-84, 385, 390, 397, 411, 412, 413, 417, 419, 421, 440, 444, 449, 450, 451, 472, 477, 478, 489, 498, 507, 508, 509, 510, 511, 514, 515, 521, 522, 523, 525, 526, 534, 535, 540-543, 545, 551, 552, 553, 571, 582, 597, 602, 608, 609, 616, 620-649, 653, 673, 683-686, 693, 694, 696, 703, 715, 754, 755, 756, 761, 763, 776, 777, 782, 792, 802, 676, 681, 682, 688, 749, 757, 758, 759, 768, 793, 796, 806, 807, 811, 818, 820, 903, 916, 917, 918, 925, 930, 946, 949, 968, 971, 993, 1008, 1012, 1021, 1026, 1038, 1039, 1040, 1044, 1058, 1077, 1091-1094, 1097, 1101. Pages 1-5 are not responsive to the request as they were created/dated after the date of the request.

[para 19] The information in the above-listed pages, as well as the pages listed in paragraph 16, is not at issue in this inquiry.

[para 20] The majority of the pages provided to the Applicant do contain her personal information. The clearest examples are paystubs and other payroll information, information related to vacation taken, vacation payouts and sick days, information related to WCB claims, and information related to disciplinary issues.

[para 21] Information relating to performance evaluations and appraisals is also the Applicant's personal information. Although it clearly relates to the performance of her work duties, the evaluative nature of the information adds a personal dimension, not unlike disciplinary information. I also find that the glove purchase forms (signed by an employee for each purchase of apparently subsidized gloves) are the personal information of the Applicant, because the cost of the gloves ordered by the Applicant is paid, in part, by her.

[para 22] The Organization argued that the Applicant had requested information from the Organization that the Applicant had already received from WCB, and that the Applicant was acting unreasonably in doing so. I do not know what the Applicant received from the WCB (and the Organization has not provided any detail on this point). It seems possible that the Applicant was seeking the information to verify that the information the WCB had was the same as the information the Organization had. Possibly, much of the information related to the Applicant's WCB claim would be the same whether it was in the custody and control of the WCB or the Organization; however, it is also possible that the Organization would have additional information related to the claim that the WCB did not have and therefore could not have provided to the Applicant. In any event, I disagree that the Applicant was acting unreasonably in requesting information related to her WCB claim from the Organization.

1. **If the Organization refused to provide access to the Applicant's personal information in its custody or control, did it do so in accordance with section 24(3) (mandatory grounds for refusal) or with section 24(4) (severing personal information of others) of the Act? In particular,**

    a. **Does section 24(3)(b) (information revealing personal information about another individual) apply to certain requested records or parts thereof?**

[para 23] Section 24(3)(b) states the following:

> *24(3) An organization shall not provide access to personal information under subsection (1) if*
>
> *…*
>
> *(b) the information would reveal personal information about another individual;*
>
> *(c) the information would reveal the identity of an individual who has in confidence provided an opinion about another individual and the individual providing the opinion does not consent to disclosure of his or her identity.*

[para 24] The Applicant argues that some of her own personal information was severed from the records. The Organization responded that in some instances, the information had been highlighted and photocopied, which may have resulted in the appearance of the information being severed. Having reviewed the records, I accept the Organization's explanation; it appears to me that the highlighted information can still be read, although with some difficulty.

[para 25] In its index of records, the Organization has indicated that it applied section 24(3)(c) to a small number of records. It has not provided any arguments in its submissions as to the reasons for applying this provision. Section 24(3)(c) applies to information that may not itself be personal information of a third party but that could

reveal the identity of an individual who provided an opinion in confidence. However, the Organization has not provided me with any evidence to indicate that an opinion was supplied in confidence in any of the records, nor does the context of the record indicate confidentiality. For example, the Organization has applied section 24(3)(c) to withhold the name of the individual who provided comments on the Applicant's performance appraisals (but not the comments themselves), which is arguably the individual's opinion of the Applicant's work habits. However, in most cases, the Applicant has also signed these appraisals, indicating that she has already had an opportunity to review their content (and presumably the name of the reviewer). Even in the few appraisals that did not contain the Applicant's signature, there was an obvious space for her signature that indicates the content was not to remain confidential. In other pages to which section 24(3)(c) was applied, there is no indication of any opinion being given; for example, the Organization applied this provision to the name of an employee of the Organization who wrote down a phone message from the Applicant saying the Applicant would be late for work. In any event, the Organization also applied section 24(3)(b) in each of these instances so I will consider the application of that exception rather than section 24(3)(c).

[para 26] The Organization severed information from many of the pages provided to the Applicant citing section 24(3)(b) (personal information of another individual). The severed information includes the names of various employees of the Organization. For example, the names of shift coordinators, HR employees, and operations managers are severed from notes of disciplinary meetings with the Applicant, voluntary leave forms, and records relating to vacation and payroll; the names of authors are severed from telephone messages; the names in footnotes on forms indicating who created the form are severed; and supervisor and HR employee names are severed from shift replacement forms, along with the name of the coworker switching shifts.

[para 27] The Organization also severed the names of individuals other than employees of the Organization acting in their work capacity including doctors the Applicant had seen, names of WCB employees involved in the Applicant's claim, and a lawyer's name. The severed information also contains signatures of some of the above-listed individuals, as well as an emergency contact name provided by the Applicant on her job application form and the names of the Applicant's son in a note, and the names of her spouse and children on a benefit document.

[para 28] The Organization also severed from the records the names and, in a few instances addresses, of various other organizations, such as the name of the glove supplier on the glove order form, a retail organization's name on a membership application filled out by the Applicant (and the name of a credit card company included on the form as a sort of advertisement), the name and address of the Organization's bank on a copy of a cheque made out to the Applicant, the name and address of the Applicant's bank appearing on a form she had filled out for direct deposit, the Applicant's past employers listed on a copy of her resume, two organizations listed on the Applicant's pay stub because the membership fee and/or premium amount was deducted from her pay, and the names and addresses of medical clinics the Applicant had visited appearing on a notepad of the clinic.

[para 29] I note that the Organization's index of records, which it confirmed was exchanged with the Applicant, identifies the names of the organizations severed from the pay stubs in the "redacted description" column. In any event, section 24(3)(b) applies only to personal information of individuals. It cannot be used to withhold names or addresses of organizations, unless the name and/or address of the organization could in some way also be personal information of an individual other than the Applicant. The Organization has not argued, and it is not apparent from the records themselves, that the names of any of the other organizations severed from the records would reveal personal information of an individual other than the Applicant. Therefore I find that section 24(3)(b) does not apply to any of that severed information, with one exception on page 481, which is discussed below.

[para 30] That said, an organization does not have to provide an applicant with information that is not the applicant's own personal information in response to an access request. In my view, the names of the organizations on the Applicant's pay stubs, the name of the medical clinics visited by the Applicant, the name of the organization on the membership form filled out by the Applicant, the information about the Applicant's bank, and the name of the Applicant's past employer from her resume provide information *about* the Applicant and are her personal information in the context in which they appear. However, the name of the credit card company on the membership form, the name of the glove supplier, and the name of the Organization's bank are not in any way about the Applicant, and are therefore not her personal information. The Organization may, but is not required to, disclose these names to the Applicant.

[para 31] The Organization has not argued that any other exception to access applies to names and addresses of the various other organizations severed from the records. As such, I will order the Organization to disclose that severed information to the Applicant that I have found to be, at the same time, her personal information, above.

[para 32] In most of the records containing the names of employees of the Organization, these individuals were acting in their professional capacity. This is also true of the records containing name of employees of other organizations (WCB), and the name of doctors who had treated the Applicant.

[para 33] In P2007-002 the Director of Adjudication stated:

> … I adopt the reasoning in Order F2004-026, at paras 109-113, which held that 'a record of what a public body employee has done in their professional or official capacities is not personal or about the person, unless that information is evaluative or is otherwise of a 'human resources' nature, or there is some other factor which gives it a personal dimension'. That case was decided under the *Freedom of information and Protection of Privacy Act*, but in this case, this reasoning applies as well to a person in private enterprise acting in a professional capacity. It also applies to the very fact that the person provided information about the Applicant.

> With regard to the signature on this letter, which is followed by a professional designation, this is not the Applicant's personal information and does not have to be disclosed, as it is not responsive to the request. However, conceivably, disclosure of the letter even with the signature removed reveals to the Applicant, by virtue of other information he has, that person's name.
>
> I note that under the FOIP Act, a person's name alone is their personal information. If its disclosure would be an unreasonable invasion of a person's personal privacy, a name alone must be withheld. However, the presumption (in FOIP section 17(4)(g)) that disclosure of a name would be an unreasonable invasion applies only if the name is associated with or would reveal other personal information about the person, (and even if the presumption applies, other factors can outweigh it).
>
> In contrast, PIPA has an outright prohibition, in responding to an access request, against disclosing any other person's personal information. It does not have provisions for balancing the related interests of parties or the public in deciding whether to disclose the information. If a name alone (unattached to any personal information of the bearer) is regarded as personal information under PIPA, section 24(3)(b) could make it necessary to withhold information that identifies the person who created or recorded it even though doing so would reveal no personal information of that person other than their name. Therefore, in my view, at least in a situation such as the present, the identity (name alone) of a person creating a document containing personal information of another (but none of their own) is not "about" the creator, and is not to be treated as their personal information. Thus if by virtue of other information the requestor has, such a record would, even if it did not record the name of the creator or that name were removed, identify the particular other person who created it, the fact the identity would be revealed does not require that the record be withheld by reference to section 24(3)(b). For the same reason, the Psychologist is not required to delete the signature on this letter in order to provide it to the Applicant (though she may do so because it is not the creator's personal information).

[Order P2007-002, at paras. 50-53]

[para 34] In Order F2011-014, an adjudicator further considered whether the signature of an individual acting in a work or professional capacity is that individual's personal information.

> Having reviewed the document the Public Body posted on the internet, I am satisfied that the Complainant signed it in her capacity as a commissioner for oaths. I am also satisfied that the Complainant's name, signature, and commission expiry date as they appear on the document do not convey anything personal about the Complainant, but instead establish that she performed her statutory function as a commissioner for oaths.
>
> If the name and signature of a commissioner for oaths who signs a document in that capacity were the commissioner's personal information, this would lead to the unworkable result that a public body would be required to comply with the requirements of a Part 2 of the FOIP Act whenever it collects, uses, and discloses affidavits and statutory declarations, but a private individual would not. This

> could potentially place public bodies at a legal disadvantage in situations where it is necessary to prove facts.

[Order F2011-014, at paras. 17 and 18]

[para 35] Although the adjudicator was considering signatures in the context of the *Freedom of Information and Protection of Privacy Act* (FOIP Act), the analysis also applies to signatures under PIPA: if the signatures of an organization's employees, signed by employees in the course of performing their jobs, were the personal information of those employees, the organization would be constrained by the rules in PIPA in the collection, use and disclosure of records that include such signatures if they were employees' personal information. Requiring consent to disclose financial statements, reports, or other business documents because they were signed by the employee responsible seems to be an unreasonable and perhaps unworkable obligation.

[para 36] Adopting the reasoning in Orders P2007-002 and F2011-014, I find that the names of the individuals acting in their professional capacities are not personal information of the individuals that *must* be severed under section 24(3)(b) of PIPA, nor are their signatures.

[para 37] However, most of the names and signatures of individuals acting in their professional capacities are not about the Applicant such that they would be her personal information; in other words, in most cases, the names (and signatures) are not responsive to the Applicant's request and need not be disclosed. There are a few exceptions: in my view, the name and signature of the doctors who treated the Applicant provide some information about the Applicant such that they are also her personal information. As I have found that the name and signature of doctors treating the Applicant are not the personal information of the doctors, I will order the Organization to disclose that information to the Applicant. The names and signatures of other individuals acting in their professional capacities are not responsive to the Applicant's request and are no longer at issue. The Organization may provide these names to the Applicant at its discretion, but it is not required to under PIPA. Other than the Applicant's own personal information, only the names and signatures of her doctors, her emergency contact person, her family members, and the names of coworkers occurring in records that have a personal dimension such that the information in the records is the Applicant's personal information (discussed further below) remain at issue.

[para 38] There are also names of individuals, in 13 of the pages, that do not appear in a work context but rather are personal information of the individuals such that they must be withheld under section 24(3)(b). Page 926 consists of an application form filled out by the Applicant, with an emergency contact name that must be withheld. Page 425 consists of a doctor's note with the Applicant's son's name, and page 747 lists the names of the Applicant's spouse and children; the names of the Applicant's family members are their personal information and must be withheld. While it seems certain that the Applicant already knows the names of her family members and emergency contact person, the exceptions to access in section 24(3) are mandatory; that is, if the information is personal

information of an individual other than the applicant, it must be withheld regardless of the applicant's prior knowledge of the information.

[para 39] The mandatory aspect of the exceptions in section 24(3) is also relevant to the discussion about opinions contained in the records. Some records contain complaints expressed either by or about the Applicant, or opinions of the Applicant and/or coworkers (the content of the opinions and complaints have been disclosed). Opinions may be personal information of both the subject of the opinion, and the giver of the opinion. Regardless of whether the opinions about or of the Applicant are also her personal information, the names of the coworkers remains the personal information of those individuals and must be withheld, as section 24(3) is mandatory.

[para 40] Page 148 contains the name and email address of a coworker who commented to an HR employee about a possible disciplinary issue regarding the Applicant as well as another coworker (only the name and email address have been severed). It is not clear that the author was acting in a supervisory role; rather it seems as likely that this was merely a fellow worker passing on a concern. In my view, the email has a personal dimension. The author's name and email address (which may identify her and therefore be her personal information as well), and the name of the other implicated coworker must be severed under section 24(3)(b).

[para 41] Pages 391-392, 436-7, 569 and 585 are notes or memos written by the Applicant regarding concerns about other employees of the Organization, with the names of the other individuals severed. The Applicant's concerns are not offered in a supervisory role and have a personal context. Therefore the names of the coworkers discussed occur in a personal context – and are personal information that must be withheld. Pages 586-587 are complaints made about the Applicant by coworkers. For the reasons given, I find that the coworkers' names must be withheld.

[para 42] Page 481 consists of a letter by an employee commending coworkers on their performance; the names of the author and other third parties have been severed. The tone of the letter indicates that it was not written by a supervisor or employee tasked with providing evaluations; rather it is a letter of a more personal nature and therefore the names of the author and the other employees mentioned in the letter is properly severed under section 24(3)(b). Additionally, the author mentions the name of a previous employer; in the context of the entire letter, the content of which was disclosed, this may allow him or her to be identified and therefore may reasonably be considered his or her personal information in this context and is properly severed under section 24(3)(b).

[para 43] Many of the above pages also contain the names of employees acting in their work capacities, as already discussed above (for example, the name of a supervisor or HR employee receiving a complaint). These names need not be withheld under the Act but neither are they the Applicant's personal information and so they are not responsive to the request and need not be provided to the Applicant.

[para 44] The same applies to the name of the supervisor and/or HR employee who signs a performance appraisal. These are not personal opinions, but professional opinions of an employee's work performance. The supervisor and/or HR employee that signs a performance appraisal is doing so in his or her professional capacity.

[para 45] The Organization argued that neither section 19 nor 20 permitted the Organization to disclose the personal information of other individuals to the Applicant. Both section 19 and 20 deal with the disclosure of personal information by an organization under Part 2 of the Act (Protection of Personal Information). These sections apply in situations where an organization discloses information on its own initiative; sections 23-32, appearing in Part 3 of the Act (Access to and Correction and Care of Personal Information), apply in situations in which an organization is being asked by an individual for access to records containing his or her personal information.

[para 46] As section 24(3)(b) prohibits the disclosure of personal information of third party individuals in response to an access request, the Organization does not need to consider whether the disclosure of personal information of third parties to the Applicant would be authorized under section 19 and 20.

b. If the withheld records consist of the personal information of the Applicant and if section 24(3)(b) applies to these records, is the Organization reasonably able to sever the information to which these sections apply and provide the personal information of the Applicant as required by section 24(4)?

[para 47] Section 24(4) states the following:

> *24(4) If, in respect of a record, an organization is reasonably able to sever the information referred to in subsection (2)(b) or (3)(a), (b) or (c) from a copy of the record that contains personal information about the individual who requested it, the organization must provide the individual with access to the record after the information referred to in subsection (2)(b) or (3)(a), (b) or (c) has been severed.*

[para 48] In the instances in which the Organization properly applied the exception to access under section 24(3)(b), the Organization severed only the name of the other individual, and provided the remainder of the record. I find that the Organization fulfilled its obligation under section 24(4) with respect to the information to which section 24(3)(b) was properly applied.

2. Did the Organization comply with section 27(1)(a) of the Act (duty to assist, including duty to conduct an adequate search for responsive records)?

[para 49] Section 27(1)(a) states the following:

> *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.

[para 50] The Applicant states, and the Organization does not deny, that the records provided to the Applicant did not indicate the reason for which the Organization severed the information. Severing information without providing the authority to do so does not fulfill the obligation to respond as accurately and completely as reasonably possible under Section 27(1)(a)(ii).

[para 51] A provision similar to section 27(1) exists under the FOIP Act (section 10(1)); in order to fulfill that obligation, a public body must show that it conducted an adequate search for records. The requirement for an adequate search for records is also applicable to section 27(1) of PIPA.

[para 52] The Organization stated that it searched various locations for the records as they were not all located in the same file. After reviewing the records provided to her on or around July 15, 2010, the Applicant sent a letter noting that some records were missing (this letter is dated August 4, 2010; however, the Organization's response to the Applicant indicates that the letter had been dropped off at the Organization's location on August 20, 2010). The Organization responded on August 31, 2010 saying that some further records had been found and were available for the Applicant to pick up, subject to a further $25 fee.

[para 53] Previous Orders discussing similar provision under the FOIP Act have stated that the fact that a public body did not find records on its first search does not prevent a finding that the public body made every reasonable effort to search for the records (Order F2003-001 at para. 40), and the fact that responsive records have been overlooked may be mitigated if a public body responds in a timely, forthright way once the error is discovered (Order F2003-009 at para. 30).

[para 54] In this case, the Organization found and prepared records the Applicant had noticed were missing, less than two weeks from the date the Applicant delivered her letter to the Organization. The Organization also explained to the Applicant that the records were not initially found because they were stored separately from the personnel files and/or had not yet been placed in the personnel file at the time of the Applicant's request. In my view, the Organization responded quickly to the Applicant's concerns that some records were missing from the documents provided to her. I will discuss the appropriateness of the additional $25 fee for these records below.

[para 55] As noted above, the Applicant states that she received many records that she did not request, such as payroll records and glove purchase forms. Past orders of this office have found that the similar provision under the FOIP Act requires a public body to clarify the nature of the access request with the applicant where there is doubt as to its scope. However, clarification is not necessary when the request is, on the face, very clear (Order 2001-013, at para. 21). Again, I find that this requirement is applicable to section 27(1) of PIPA.

[para 56] The Organization stated in its submission that it requested clarification from the Applicant regarding the information she was seeking. I have no evidence that such clarification took place, and the Applicant did not provide any arguments on this point. After reviewing the Applicant's request made to the Organization, I agree with the Organization that the Applicant clearly requested all information related to her employment. The specific elements mentioned by the Applicant in her request (e.g. information about her WCB claim) may have indicated to the Organization that the Applicant had certain information in mind; however, the request itself was not unclear and in my view, it was reasonable to accept it at face value. That said, it seems that had the Organization clarified with the Applicant the specific information she sought, the Organization would have saved a significant amount of time and cost in processing the Applicant's request.

[para 57] Conducting an adequate search and responding to an applicant accurately and completely includes eliminating non-responsive records. I found above that the Organization included a significant number of non-responsive records in the package of records provided to the Applicant. The Organization submits that this was the first request it has processed under PIPA. Although this may be an unfamiliar process, the Organization still has an obligation to respond appropriately under the Act.

[para 58] The scope of what an applicant can request under PIPA is somewhat narrow; it might not be unusual for an organization to include non-personal information along with personal information in response to a request under PIPA, especially where taking the time to sever the non-personal information would be time-intensive and therefore more costly to the applicant than simply providing some non-responsive information along with the responsive information. That is not the case here. In most instances, the non-responsive information is readily apparent and the pages containing the Applicant's personal information could have easily been separated from pages that clearly did not contain the Applicant's personal information. By not removing the large quantity of non-responsive records, the Organization failed to meet its duty to assist the Applicant.

[para 59] I find that the Organization conducted an adequate search for records, including the records that were not initially part of the records disclosed to the Applicant but were found soon after the Applicant pointed out the omission. However, I find that the Organization did not meet its duty to assist the Applicant when it included in its response a significant number of records that were not responsive to a request for personal information under PIPA, and when it failed to indicate the authority for withholding information in the records.

3. Did the Organization properly apply section 32(1) (reasonable fees) of the Act? If not, should the fees be reduced/waived?

[para 60] Prior to the May 1, 2010 amendments, section 32(1) stated the following:

> *32(1) An organization may charge an applicant who makes a request under section 24 a reasonable fee for access to the applicant's personal information or a record relating to the information.*

[para 61] An organization may not charge fees for providing personal information under PIPA to employees of the Organization; however, prior to the amendments to PIPA that came into force on May 1, 2010, fees could be charged for responding to access requests made by former employees. The amendments clarified that fees could not be charged for requests for personal employee information of potential, current, or former employees (section 32(1.1)).

[para 62] The Applicant asks that I consider her April 26, 2010 request to have been made after the amendments came into force on May 1, 2010. She argues that the Organization did not start processing the request until after she had paid the deposit on May 10, 2010.

[para 63] The Applicant's request was dated April 26, 2010. The Organization provided me with a copy of the envelope in which the Applicant's request was received; based on a date stamp on the envelope, the letter appears to have been sent on April 26, 2010, and the envelope is for next-day service. Given this, and the fact that April 26, 2010 was the beginning of the business week, it is reasonable to infer that the Organization received the Applicant's access request prior to May 1, 2010, and therefore prior to the amendments. The date upon which the Organization actually began processing the request is not relevant to the question of when the Organization received the request. For this reason, I cannot consider the May 1, 2010 amendments to the Act in making my determination regarding fees.

[para 64] As the Organization points out, PIPA does not include a fee schedule. The Organization states that it paid a law firm to review, sever, and photocopy the records. The law firm charged the Organization $1022.40 for this service; the Organization chose to follow the fee schedule in the FOIP Regulation, and charged the Applicant $396.50 for the records in accordance with that schedule (with an additional $25 fees owing for the package of records the Applicant did not pick up). Specifically, the Organization states that it charged $.25 per page for photocopying 1050 pages (totaling $262.50), with the remainder of the fees ($159) being charged for reviewing, severing, preparing, handling, etc.

[para 65] I have found that a significant amount of information provided by the Organization to the Applicant was not the Applicant's personal information under section 1(k) of PIPA. An organization may, of its own volition or pursuant to another process,

provide access to information that is not personal information; however, that process is not subject to PIPA and therefore I cannot review the organization's response.

[para 66] In this case, the Organization indicated that the information provided to the Applicant was provided pursuant to PIPA. This indicates that the information is the Applicant's personal information, as that is the only information that can be requested under PIPA. In my view, where an organization charges fees for responding to an access request under PIPA, it cannot include, and charge for, a significant number of records that are not subject to an access request under PIPA without the consent of, or as a necessary condition of (express or otherwise), providing the records that *are* subject to an access request under PIPA. Information that is not the Applicant's personal information account for approximately 25% of the pages provided to the Applicant. The Applicant should not have been charged, under PIPA, for severing information from, or photocopying, these pages.

[para 67] With respect to the records that contain the Applicant's personal information, most of the information severed by the Organization was not severed in accordance with the Act. A finding that an organization applied exceptions to access erroneously will not necessarily lead to a reduction of fees; however, the Organization's application of the exceptions to access for third party personal information was, in many instances, not reasonably supportable by the Act. Specifically, severing the names of other organizations, such as the name of the Applicant's previous employer on her resume, and the name of the medical clinic visited by the Applicant from a doctor's note written on prescription-pad paper and clearly supplied by the Applicant to the Organization, under an exception expressly encompassing only individuals, is not supportable.

[para 68] That said, the Organization's application of section 24(3)(b) to *some* of the names of other employees in the Organization, as well as other individuals who were acting in their work capacities (and to which, therefore, the exception does not apply) was incorrect (or unnecessary) but not so evidently incorrect so as to be unreasonable, in my view.

[para 69] Section 52(3)(c) gives the Commissioner the ability to reduce a fee or order a refund in appropriate circumstances:

> *52(3) If the inquiry related to any matter other than a matter referred to in subsection (2), the Commissioner may by order do one or more of the following:*
>
> *...*
>
> *(c) confirm, excuse or reduce a fee, or order a refund of a fee, in the appropriate circumstances;*
>
> *...*

[para 70] In Order F2012-06, the adjudicator considered the application of the same provision under the FOIP Act in circumstances in which the public body severed large portions of information without proper justification under that Act. She stated

> [t]he manner in which the Public Body calculated the fees and the manner in which it severed information in this case had the effect of undermining a central purpose of the FOIP Act: the right of timely access to records in the custody or control of a Public Body. I say this because the Public Body withheld information for reasons that were not borne out by the records, and charged inflated costs for processing the access request. In saying this, I do not mean that every time a public body makes a decision that is not confirmed at an inquiry that a complete refund of fees must necessarily be ordered as a result. However, in this case, the amount of severing done, and the lack of justification for it, has resulted in the Applicant being deprived of her rights under the FOIP Act.

[Order F2012-06, at para. 220]

[para 71] I acknowledge that this was the Organization's first attempt at responding to a request under PIPA; however, the Applicant cannot be expected to pay for the Organization's lack of experience. The adjudicator's comments in Order F2012-06 are applicable here: fees will not necessarily be partially or wholly refunded simply because an organization's application of an exception to access is not confirmed at inquiry. That said, a significant amount of information provided to the Applicant was either not personal information that can be requested (or charged for) under PIPA, or was severed from the records without reasonable justification. In my view, the Applicant should not be asked to pay for the time taken to sever information from records that are not responsive to the request or when there is no apparent justification for the severing.

[para 72] The Organization states that it provided 1050 pages of records. In the copy of redacted records provided to me by the Organization, the last page is numbered 1146, but the Organization stated that the pages were mis-numbered at one point (skipping from number 823 to 864); therefore there are forty fewer pages (1106).

[para 73] There are also five pages in the package of unredacted records provided to me by the Organization, that the Organization has noted were in the "original" records and/or not in the working copy of records and were not numbered[1]. Including the nine pages of records that the Applicant did not pick up, there appear to be 1120 pages of records in total. The reason for the discrepancy between my count and the Organization's is not clear.

[para 74] A total of 288 pages do not contain the Applicant's personal information under the Act (blank forms, work product information). A further five pages were not responsive to the request (created and/or dated after the date of the request). 832 pages were therefore responsive to the request.

[para 75] The Organization's fee calculation was based on 1050 pages. They charged $0.25/page for photocopying (totalling $262.50). The remainder was charged for searching and severing ($159). The Organization may charge photocopying fees for only

[1] One page appears in between pages 924 and 925; one page appears between pages 926 and 927; two pages appear between pages 929 and 930; one page appears between pages 1056 and 1057.

the responsive records (including the 9 not yet retrieved by the Applicant): 832 x $0.25 = $208.00.

[para 76] According to the Organization's submissions, $159 was charged for searching/severing. Regarding this portion of the fee, in determining whether it should be reduced I consider the following to be relevant factors: the Organization performed an adequate search for records; the Organization did not provide the Applicant with any explanation for the information that was severed; a significant amount of the severing was not reasonably supportable; and only 13 pages of the responsive records contained information properly withheld by the Organization.

[para 77] The Organization has not told me how much of the $159 applies to searching and how much to severing. Given the amount of information severed from the records, it seems likely that much more time was spent severing the records than searching for them. As the severing was the most problematic aspect of the Organization's response to the Applicant, along with the lack of explanation provided for the severing, in my view it is reasonable to reduce the portion of these fees to 25%, or $39.50.

[para 78] The total comes to $247.50. I intend to order the Organization to refund the difference between what it charged the Applicant, and my calculation of fees (The Applicant paid the Organization $396.50 for the records; the difference between that amount and my calculation is $149.00).

[para 79] With respect to the second package of records not yet received by the Applicant, the Applicant should not have to pay for the time taken to conduct a second search. I found that the Organization did not fail to adequately search for records only because it quickly corrected its initial error of missing these pages; however, the fact that the error was corrected quickly does not mean that the Applicant should pay for that initial error.

[para 80] It is unclear to me whether the Organization provided me with an unredacted copy of these nine pages, or whether the Organization determined that no severing was required. Based on my review of the records and following the reasoning above, there would be minimal, if any, severing required and so no fees need to be included for severing (if any). The Organization may therefore charge only photocopying costs at $.025/page for the nine pages ($2.25, already included in total above).

V. ORDER

[para 81] I make this Order under section 52 of the Act.

[para 82] I find that the Organization did not properly apply section 24(3)(c) to any of the information at issue.

[para 83] I find that the Organization did not properly apply section 24(3)(b) to the withheld information, except the information described in paragraphs 38-43 above. I

order the Organization to disclose the information to which section 24(3)(b) was not properly applied and that remains at issue (per paragraphs 30-31, and 37).

[para 84] I find that the Organization conducted an adequate search for information but failed to fulfill its duty to respond to the Applicant accurately and completely under section 27(1)(a). I order the Organization to provide the Applicant with new copies of the information at issue, with severing as required in paragraph 83 and an indication on the copies of the authority for withholding the severed information.

[para 85] I find that the fees charged by the Organization were not reasonable, as required by section 32(1). I order the Organization to refund the Applicant $149.00, per paragraph 78. As the fees for the nine pages of records not yet received by the Applicant are included in this calculation, I order the Organization to provide those records to the Applicant, subject to severing the records in accordance with the principles described in this order, specifically under Issue 1.

[para 86] I order the Organization to notify me in writing, within 50 days of being given a copy of this Order, that it has complied with the Order.

Amanda Swanek
Adjudicator