

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER P2014-04

July 2, 2014

TD INSURANCE

Case File Number P2063

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Summary: The Applicant had an automobile insurance policy with TD Insurance (the “Organization”) and he was the sole policy holder. Under the *Personal Information Protection Act* (“PIPA”), he asked for copies of audio recordings of two conversations between the Organization’s representatives and his ex-wife, who had purported to be the holder of the insurance policy even though she was not.

Section 24(1)(a) of PIPA permits an applicant to request access to his or her own personal information only. The Adjudicator found that some of the information in the audio recordings was not the Applicant’s personal information to which he could request access, as it was the personal information of his ex-wife and her personal information only, or was information about the Organization’s products and processes.

Section 24(3)(b) of PIPA does not permit access even to an applicant’s own personal information where it would reveal another individual’s personal information, unless the organization can reasonably sever the other individual’s personal information from the applicant’s personal information. The Adjudicator found that, in instances where the Applicant’s ex-wife conveyed the Applicant’s personal information during the telephone conversations, her own personal information, being her voice, was also revealed. The Adjudicator found that her voice could not reasonably be severed from the audio recordings.

In instances where the Organization's representative conveyed the personal information of the Applicant, only his personal information was revealed, as the representative's voice formed part of her work product and was not her personal information. However, because the Applicant's personal information was contained in four sentences only, and the information would be meaningless or worthless to him, the Adjudicator found that the Organization was not required to sever information in the audio recordings so as to provide the Applicant access to the four sentences.

The Adjudicator accordingly confirmed the decision of the Organization to refuse the Applicant access to the audio recordings of the telephone conversations between his ex-wife and the Organization's representatives.

Statutes Cited: **AB:** *Personal Information Protection Act*, S.A. 2003, c. P-6.5, ss. 1(1)(k), 2, 24, 24(1)(a), 24(3)(b), 24(4), 52 and 52(2)(a)(ii); *Personal Information Protection Amendment Act, 2009*, S.A. 2009, c. 50; *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, s. 6(2).

Authorities Cited: **AB:** Orders 96-019, F2007-013, P2006-005, P2011-002, P2011-003 and P2013-04.

I. BACKGROUND

[para 1] The Applicant had an automobile insurance policy with TD Insurance (the "Organization") and he was the sole policy holder. On September 10, 2009, his ex-wife, wanting to rent a vehicle in Texas, contacted a first representative of the Organization, purporting to be the holder of the insurance policy in question. She elicited information about the insurance policy, convinced the representative to change the gender noted on file by altering the title of the policy holder from "Mr." to "Mrs.", and arranged the purchase of car rental coverage. The Applicant's ex-wife then contacted a second representative of the Organization and arranged for confirmation of the car rental coverage to be faxed to her at the car rental agency.

[para 2] The Applicant apparently learned from the first representative of the Organization, sometime on September 10 or 11, 2009, that a woman, whom he later found out to be his ex-wife, had contacted the Organization about his insurance policy. On September 11, 2009, and as contemplated by the *Personal Information Protection Act* ("PIPA"), he requested a copy of all recordings of telephone conversations between the woman and the Organization that had occurred on September 10, 2009. By letter dated November 9, 2009, the Organization provided a copy of a transcript of the conversation between the woman and its first representative. It also allowed the Applicant to listen to that recording, which is presumably how he came to know that the caller had been his ex-wife. Still wanting a copy of the audio recording, the Applicant again asked for one on October 15, 2009, but the Organization did not provide one.

[para 3] The Organization appears not to have provided a copy of a transcript of the telephone conversation between its second representative and the Applicant's ex-wife,

and the Applicant did not re-request a copy of the recording of that conversation on October 15, 2009. However, as noted, he had requested a copy on September 10, 2009.

[para 4] The former Commissioner authorized a portfolio officer to investigate and attempt to resolve the matter between the parties. This was not successful, and the Applicant requested an inquiry on January 9, 2013. A written inquiry was set down.

[para 5] On May 1, 2010, amendments to PIPA came into force by virtue of the *Personal Information Protection Amendment Act, 2009*. While the Applicant's access request occurred prior to this date, the substance of the relevant provisions was not changed by the 2010 amendments.

II. RECORDS AT ISSUE

[para 6] The records at issue are copies of the audio recordings of the telephone conversations between the Applicant's ex-wife and the two representatives of the Organization. The first is approximately five and a half minutes long, and the second is approximately two minutes long.

III. ISSUES

[para 7] The Notice of Inquiry, dated January 21, 2014, set out the following issues:

Is the information in the records the Applicant's personal information, to which he may request access under section 24(1)(a) of PIPA?

If so, does section 24(3)(b) of PIPA apply to the information (requirement to refuse access to information revealing personal information about another individual)?

[para 8] In his submissions in this inquiry, the Applicant makes arguments regarding the Organization's violation of his privacy when it conveyed some of his personal information to his ex-wife. The Applicant's privacy complaint, as opposed to his access request, was already addressed by me in a different inquiry. Among other things, I addressed his comments about the Organization password-protecting his account (see Order P2013-04 at para. 19) and his request for particular remedies (see Order P2013-04 at paras. 25 to 27).

IV. DISCUSSION OF ISSUES

[para 9] Section 24 of PIPA reads, in part, as follows:

24(1) An individual may, in accordance with section 26, request an organization

(a) to provide the individual with access to personal information about the individual, or

...

(3) An organization shall not provide access to personal information under subsection (1) if

...

(b) the information would reveal personal information about another individual;

...

(4) If 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 applicant, the organization must provide the applicant with access to the part of the record containing the personal information after the information referred to in subsection (2)(b) or (3)(a), (b) or (c) has been severed.

[para 10] As set out above, PIPA permits an applicant to request access to his or her own personal information only. Further, PIPA does not permit access even to an applicant's own personal information where it would reveal another individual's personal information, unless the organization can reasonably sever the other individual's personal information from the applicant's personal information.

A. Is the information in the records the Applicant's personal information, to which he may request access under section 24(1)(a) of PIPA?

[para 11] Under section 1(1)(k) of PIPA, "personal information" is defined as follows:

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

[para 12] Portions of the records at issue consist of the Applicant's personal information, such as the fact that he had an insurance policy, the type of vehicle that he owned, the amount of insurance coverage that he had, the applicable deductibles, and whether he had rental car coverage. He is therefore entitled to request access to this personal information under section 24(1)(a).

[para 13] Other portions of the records at issue do not consist of the Applicant's personal information. Some information is the personal information of his ex-wife, and her personal information only, such as the information that reveals her activities at the time of her telephone conversations with the Organization. Other information is nobody's personal information, as in instances where the first representative of the Organization explains insurance products offered by the Organization, and where the second representative explains certain of the Organization's processes. The Applicant is not entitled to request access to the foregoing information.

[para 14] In fact, I find that the recording of the telephone conversation between the second representative of the Organization and the Applicant's ex-wife contains none of the Applicant's personal information. As explained at the outset of this Order, the second telephone call was for the purpose of arranging for confirmation of the newly added car rental coverage to be faxed to the Applicant's ex-wife, which I find to reveal nothing about the Applicant in the circumstances of the present case. As also just noted, the remainder of the second recording consists of information about some of the Organization's processes, such as the manner in which information is faxed, and a preference that callers deal with the representative who answers the call as opposed to the representative with whom the caller dealt previously.

[para 15] As the information in the second audio recording is not information to which the Applicant may request access under section 24(1)(a) of PIPA, the remainder of this Order will be concerned with the first recording only.

B. Does section 24(3)(b) of PIPA apply to the information (requirement to refuse access to information revealing personal information about another individual)?

[para 16] As noted earlier in this Order, section 24(3)(b) of PIPA requires an organization to refuse access to an applicant's own personal information if the information would reveal another individual's personal information.

[para 17] As also noted earlier, "personal information" means information about an identifiable individual. As for whether the audio recording remaining at issue reveals the personal information of other individuals, I find that it does. The Organization's representative apparently gave her first and last name to the Applicant when he spoke to her on September 10 or 11, 2009, as he provided her name in his access request. I also accept the Applicant's evidence that the woman who spoke to the Organization's representative was his ex-wife and that she is therefore identifiable to him. As indicated at the outset of this Order, the Applicant was given the opportunity to listen to the audio recording, and he would be in a position to recognize the voice of his ex-wife.

[para 18] An identifiable individual's voice, tone and inflection revealed by an audio recording can constitute his or her personal information (see Order P2011-003 at para. 12). However, where the individual's voice is recorded as a result of his or her employment duties, the recording constitutes work product, which normally does not consist of personal information, unless there is a personal dimension (see Order P2011-002 at paras 13 to 22, which found that images of employees in a promotional video, which video would also have revealed their voices, were their work product and therefore not their personal information). It has also been expressly stated that "tapes of calls" made by an employee constitutes work product created in the course of employment, and is generally not the personal information of the employee (Order P2006-005 at para 50).

[para 19] Here, the audio recording of the voice of the Organization's representative, and the content of what she says, has no personal dimension that might render it her personal information. Accordingly, there is no personal information of the Organization's representative falling within the terms of section 24(3)(b), and to which the Organization can refuse access in instances where the representative conveys the Applicant's personal information.

[para 20] Conversely, the recording of the voice of the Applicant's ex-wife, who made the telephone call to the Organization in her personal capacity, constitutes her personal information. Therefore, where the content of the ex-wife's side of the conversation conveys the personal information of the Applicant, it also reveals the personal information of his ex-wife, being her voice. All of the Applicant's personal information conveyed by his ex-wife accordingly falls within the terms of section 24(3)(b). This means that – subject to section 24(4) about to be discussed – the Organization must refuse to give the Applicant access.

[para 21] In accordance with section 24(4) of PIPA, the Organization must provide the Applicant with access to his own personal information if the Organization is reasonably able to sever the personal information that falls within the terms of section 24(3)(b), being the personal information of the Applicant's ex-wife. Because the voice of the Applicant's ex-wife cannot be "removed" from what she says in the recording, I find that section 24(4) is not engaged. I considered whether the voice of the ex-wife can be "removed" in the sense of being disguised, but I find that this would not be reasonable in terms of severing, which is a requirement in order to trigger section 24(4). Section 2 of PIPA states that the standard to be applied in determining whether something can be dealt with reasonably is what a reasonable person would consider appropriate in the circumstances. In my view, a reasonable person would not consider it appropriate for an organization to acquire and use some form of technology so as to be able to disguise voices on audio recordings.

[para 22] As for the information conveyed by the representative of the Organization, as opposed to the Applicant's ex-wife, only four sentences reveal the Applicant's personal information, to which he is entitled to request access under section 24(1)(a) and which does not consist of any information falling within the terms of section 24(3)(b). The sentences reveal his name, the type of car he owned at the time, and aspects of his insurance coverage. While it may be practically feasible for the Organization to isolate these four sentences on an audio recording and give the Applicant access, I nonetheless find that section 24(4) is not engaged for the reasons that follow.

[para 23] Section 24(4) of PIPA is analogous to section 6(2) of the *Freedom of Information and Protection of Privacy Act*, which states:

6(2) The right of access to a record does not extend to information excepted from disclosure under Division 2 of this Part, but if that information can reasonably be severed from a record, an applicant has a right of access to the remainder of the record.

In the context of the above provision, it has been found that, in instances where disclosure of information to an applicant would be meaningless or worthless, it may be construed that a public body reasonably fulfilled its duty to sever information even though it did not provide access to the meaningless or worthless information (Order 96-019 at para. 47; Order F2007-013 at para. 115). I extend this principle to the application of section 24(4) of PIPA.

[para 24] In this inquiry, the information to which the Applicant may have a right of access consists merely of a few seconds of the entire audio recording that he wishes to have. Moreover, while I may be mistaken, I take it that he wants a copy of the recording primarily to have access to the information conveyed by his ex-wife and not the information conveyed by the representative of the Organization. In any event, given the worth of their content, I do not find it necessary to order the Organization to give the Applicant access to a recording of the four sentences in which his personal information alone is revealed. Providing access to the four sentences would not constitute reasonable severing so as to require the Organization to sever.

V. ORDER

[para 25] I make this Order under section 52 of PIPA.

[para 26] Under section 52(2)(a)(ii), I confirm the decision of the Organization to refuse the Applicant access to the audio recordings of the telephone conversations between his ex-wife and the Organization's representatives.

Wade Raaflaub
Adjudicator