

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER P2015-04

May 8, 2015

**INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS, LOCAL UNION 424**

Case File Number P2218

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Summary: A Complainant made a complaint that the International Brotherhood of Electrical Workers, Local Union 424 (IBEW) had used or disclosed his personal information without his consent when it submitted medical reporting he had provided to IBEW to a medical consultant.

The Adjudicator found that the *Personal Information Protection Act* (PIPA) did not require IBEW to obtain the Complainant's consent prior to providing the information to a medical consultant because it had given the information to the medical consultant as part of an investigation or to prepare for a legal proceeding. The Adjudicator found that it was reasonable for IBEW to provide the Complainant's personal information to the medical consultant in order to obtain his professional opinion and assessment, which would assist IBEW to ensure that it was meeting its duties to the Complainant under human rights and labour legislation and to prepare for legal proceedings before the Alberta Human Rights Commission and the Alberta Labour Relations Board.

Statutes Cited: **AB:** *Personal Information Protection Act* S.A. 2003, c. P-6.5 ss. 1, 7, 16, 19, 20, 52; *Labour Relations Code* R.S.A. 2000, c. L-1, s. 26; *Alberta Human Rights Act*, R.S.A. 2000 c. A-25.5, s. 9

I. BACKGROUND

[para 1] On November 28, 2012, the Complainant made a complaint to the Commissioner that the International Brotherhood of Electrical Workers, Local Union 424 (IBEW) had used and disclosed his personal information without his consent. He complained that IBEW contravened the *Personal Information Protection Act* (PIPA) when it provided his medical information to a medical consultant for review and obtained the consultant's opinion as to whether the Complainant had a disability, and if so, whether IBEW could do anything to reduce the symptoms of the disability.

[para 2] Prior to the Complainant's complaint under PIPA, IBEW suspended the Complainant's dispatch privileges. On October 4, 2012, a business manager of IBEW sent the Complainant the following letter:

[...] since joining IBEW [...] there have been a number of issues that the Local Union has had to deal with involving yourself. The Local Union has tried to deal with these matters in a professional manner; however we have seen a consistent inability on your part to dealing with these matters in a similar fashion. This has resulted in your inability to maintain consistent, meaningful employment with our signatory contractors. Your actions have also resulted in deteriorating the Local Union's relationships with those contractors to ensure future employment for not only yourself but our entire membership.

The last issue arising from your dispatch to [a company] has led the Local Union to investigate why this behavior occurs. You have brought to our attention that you may have been diagnosed with Asperger's and have provided the Local Union some helpful information in this regard. With this being the case we are withholding dispatch privileges from you until such time as we have adequate medical information. Please provide documentation from your doctor showing that you have been diagnosed, what the past treatment was and what the treatment plan is for moving forward. This will assist us in attempting to find a path forward for you to work successfully in a safety sensitive, team oriented workplace.

In order to maintain your privacy in this matter please forward the required information directly to me only.

[para 3] The Complainant submitted medical reporting to the business manager. On October 10, 2012, the Complainant filed complaints regarding IBEW's decision to withhold dispatch privileges with the Alberta Labour Relations Board and the Alberta Human Rights Commission.

[para 4] On October 31, 2012, IBEW submitted the medical reporting obtained from the Complainant to a medical consultant. It asked the consultant to give his opinion as to whether the Complainant had a disability, and if so, what the symptoms would be and whether he had any suggestions for IBEW or a prospective employer to manage them. The medical consultant provided his opinion on November 12, 2012. The consultant's report was entered into evidence at a meeting of the Alberta Labour Relations Board on November 13, 2012, at which time the Complainant became aware that IBEW had provided his medical reporting to the consultant.

[para 5] The Commissioner authorized mediation to resolve the complaint that IBEW had used or disclosed the Complainant's personal information without his consent

when it obtained the medical opinion. As mediation was unsuccessful, the complaint was scheduled for a written inquiry.

II. ISSUES

Issue A: Did the Organization use the Complainant's personal information in contravention, or compliance with, section 7(1) of PIPA?

Issue B: Did the Organization disclose the Complainant's personal information in contravention of, or compliance with, section 7(1) of PIPA?

Issue C: Did the Organization use the Complainant's personal information in contravention of, or compliance with, section 16 of PIPA?

Issue D: Did the Organization disclose the Complainant's personal information in contravention of, or compliance with, section 19 of PIPA?

III. DISCUSSION OF ISSUES

Issue A: Did the Organization use the Complainant's personal information in contravention, or compliance with, section 7(1) of PIPA?

Issue B: Did the Organization disclose the Complainant's personal information in contravention of, or compliance with, section 7(1) of PIPA?

[para 6] Section 7(1) of PIPA states:

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

(a) collect that information unless the individual consents to the collection of that information,

(b) collect that information from a source other than the individual unless the individual consents to the collection of that information from the other source,

(c) use that information unless the individual consents to the use of that information, or

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

[para 7] Section 7(1) requires an organization, such as IBEW, to use or disclose personal information only with the consent of the individual whom the information is

about, unless another provision of PIPA authorizes it to use or disclose the personal information without consent.

[para 8] The Organization used and/or disclosed the Complainant's personal information when it provided his medical reporting to the medical consultant. The medical reporting is clearly the Complainant's personal information, as it is "about" him as an identifiable individual within the terms of section 1(1)(k) of PIPA.

[para 9] In this order, I need not characterize each specific act of the Organization as either a "use" or a "disclosure" under PIPA. The "use" and "disclosure" provisions that are relevant to this inquiry have the same content, and the question of whether the Organization contravened PIPA therefore does not depend on whether the Organization used – as opposed to disclosed – the Complainant's information, or vice-versa. I have therefore decided to address the questions regarding the Organization's use and disclosure together, rather than separately.

[para 10] Section 17 of PIPA establishes the circumstances in which an organization may use personal information without consent. It states, in part:

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

[...]

(d) the use of the information is reasonable for the purposes of an investigation or a legal proceeding [...]

[para 11] Section 20 of PIPA sets out the circumstances in which an organization may disclose personal information without consent. It states, in part:

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

[...]

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

[para 12] Section 1(1)(f) of PIPA defines the term "investigation" for the purposes of the Act. It states:

1(1) In this Act,

(f) "investigation" means an investigation related to

- (i) *a breach of agreement,*
- (ii) *a contravention of an enactment of Alberta or Canada or of another province of Canada, or*
- (iii) *circumstances or conduct that may result in a remedy or relief being available at law,*

if the breach, contravention, circumstances or conduct in question has or may have occurred or is likely to occur and it is reasonable to conduct an investigation [...]

[para 13] Section 1(1)(g) of PIPA defines “legal proceeding”. It states:

1(1) In this Act,

(g) “legal proceeding” means a civil, criminal or administrative proceeding that is related to

- (i) a breach of an agreement,*
- (ii) a contravention of an enactment of Alberta or Canada or of another province of Canada, or*
- (iii) a remedy available at law[...]*

[para 14] If personal information about an individual is used or disclosed for purposes relating to an investigation or a legal proceeding as defined in section 1, the individual’s consent is not required to disclose the information.

[para 15] Counsel for IBEW argues:

It is the position of [IBEW] that there was no violation of the *Personal Information Protection Act (“PIPA”)* in that:

- It had the explicit consent of [the Complainant] to disclose and use the information.
- It had the deemed consent of [the Complainant] to disclose and use the information.
- [the Complainant] had sufficient notice that [IBEW] would disclose and use this information for the purposes of assessment of his claim for accommodation.

In the alternative, it is the position of [IBEW] that the disclosure to [the medical consultant] and the use of the information to assess the asserted disabilities was with respect to an investigation and/or a legal proceeding.

Lastly, it is the position of [IBEW] that the provision of the documentation to [the medical consultant] was not the disclosure of the documents beyond the organization in that [the medical consultant] was contracted with [IBEW] to do the assessment and as such, [the medical consultant] was an agent acting on behalf of [IBEW]. This makes the provision of the

documentation to [the medical consultant] to not be a disclosure in that a union can only act through agents acting on behalf of it (employees or contracted third parties).

[para 16] The Complainant argues:

For this to be explicit consent I would have first had the option to agree or disagree with the disclosure of the information I was not presented with any kind of an opportunity. Therefore the [IBEW] and their lawyers McGown Johnson Barristers & Solicitors ("McGown Johnson") cannot claim that this was explicit consent. I should have been contacted prior to the release of this information and asked if I consent to the release of this information. That was not done and therefore this is not explicit consent.

This could not also be considered implicit consent either because the use of the information would have to be considered reasonable. Nor was the purpose ever for this information to be released. Also it is not reasonable for this information to be released to Dr. [...] since Dr. [...] does not have the training needed to be able to deal with someone who has Asperger's Syndrome and Attention Deficit Disorder ("A.D.D"). Dr. [...] has a specialty of addiction which I do not have. It was in no way obvious that the [IBEW] was going to release this information to a 3rd party individual at the time of giving them this information. All information was expected to be kept in strict confidence and not released without my permission. There was an expectation of privacy here which is expected and was violated by the [IBEW] and their lawyers at McGown Johnson. The [IBEW] and McGown Johnson gave my personal medical information to Dr. [...], who has no expertise in Asperger's Syndrome or A.D.D. even though the [IBEW] was given a list of doctors sent via email to [...] who do have the needed expertise and whom I had never seen before. It is not reasonable for the [IBEW] to release information to a doctor who does not even have the needed expertise to make any such determination. It would be the same as the [IBEW] or their lawyers sending my case to a proctologist asking for that doctor to comment on my case about Asperger's Syndrome and A.D.D.

[para 17] The Complainant takes the position that IBEW did not obtain his consent to use or disclose the personal information it provided to the medical consultant and that section 7(1) of PIPA requires it to do so in the circumstances.

[para 18] IBEW takes the position that it obtained the Complainant's express consent to use his health information to investigate his claim of disability and that providing the information to a medical consultant was a use of the information rather than a disclosure. In the alternative, it argues that the Complainant was deemed to consent to the use or disclosure of the information or was provided notice of IBEW's intent to do so. Finally, it argues that it did not require consent to use or disclose the information in the circumstances.

[para 19] Despite the arguments of the parties, I need not determine whether IBEW's provision of the Complainant's personal information to the medical consultant was a use or a disclosure, or whether the Complainant consented to this use or disclosure, as I find that section 17(d) would apply if the exchange is considered a "use" of the information, and section 20(m) would apply if the exchange is termed a "disclosure". When use or disclosure is reasonable for the purposes of an investigation or legal proceeding, section 7(1) does not require the individual's consent to the use or disclosure.

[para 20] The evidence of the parties establishes that IBEW obtained the Complainant's medical information in order to investigate whether he had a disability

within the terms of the *Alberta Human Rights Act* (AHRA) that could be accommodated, or whether the Complainant should be expelled or suspended from membership in the union.

[para 21] Section 9 of the AHRA states:

9 No trade union, employers' organization or occupational association shall

- (a) exclude any person from membership in it,*
- (b) expel or suspend any member of it, or*
- (c) discriminate against any person or member,*

because of the race, religious beliefs, colour, gender, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status or sexual orientation of that person or member.

[para 22] Section 26 of the *Labour Relations Code* (LRC) prohibits trade unions from expelling members without a full and fair hearing. It states:

26 No trade union shall expel or suspend any of its members or take disciplinary action against or impose any form of penalty on any person for any reason other than a failure to pay the periodic dues, assessments and initiation fees uniformly required to be paid by all members of the trade union as a condition of acquiring or retaining membership in the trade union, unless that person has been

- (a) served personally or by double registered mail with specific charges in writing,*
- (b) given a reasonable time to prepare the person's defence,*
- (c) afforded a full and fair hearing, including the right to be represented by counsel, and*
- (d) found guilty of the charge or charges, and if a monetary penalty has been imposed, fails to pay it after having been given a reasonable time to do so.*

[para 23] In this case, both statutory provisions were engaged. If IBEW suspended the Complainant for conduct attributable to disability without taking steps to accommodate such disability, its conduct would offend the AHRA. In such circumstances the Human Rights Commission could require IBEW to pay costs or compensation.

[para 24] Alternatively, in order to ensure that it was fully and fairly hearing the issues that could give rise to a decision to expel or suspend the Complainant from the union within the terms of section 26 of the LRC, it would be reasonable for IBEW to determine whether the Complainant's conduct was attributable to disability and could be accommodated, or not.

[para 25] From the evidence contained in attachments 4(d) and (e) in IBEW's submissions, I find that IBEW provided the Complainant's medical reporting to the medical consultant in order to determine whether it would be in compliance with the AHRA and the LRC if it expelled or suspended the Complainant, or whether it would be possible to accommodate any disability and bring itself into compliance with the provisions of these statutes in that way. Attachments 4(d) and (e) indicate that IBEW provided the medical reporting to the consultant for his opinion after the Complainant filed complaints with the Alberta Labour Relations Board and the Alberta Human Rights Commission.

[para 26] In my view, submitting the Complainant's medical reporting to a medical consultant, in this case, a qualified psychiatrist, to obtain his views as to whether the Complainant had a disability was a reasonable step. IBEW needed to know whether it was in compliance with, or contravention of, the LRC and the AHRA regarding the decisions it had to make regarding the Complainant's continued membership. It was reasonable for IBEW to investigate the possibility that the Complainant had a disability that was contributing to workplace issues, as failure to do so could result in a remedy or relief being available to the Complainant under either statute.

[para 27] Moreover, as the Complainant initiated complaints under the AHRA and the LRC on October 10, 2012, and these proceedings could result in legal remedies, its decision to provide the medical reporting to the consultant may also be viewed as preparation for legal proceedings, given that the questions IBEW asked the medical consultant touched on the issues raised by the complaints.

[para 28] I find that IBEW obtained the medical consultant's opinion regarding the Complainant's status as part of an investigation "related to circumstances or conduct that may result in a remedy or relief being available at law" as defined by section 1(1)(f) of PIPA. Alternatively, I find that the medical consultant's opinion was obtained in contemplation of legal proceedings under the AHRA or the LRA, as the opinion was obtained to assist the IBEW in understanding the Complainant's conduct and making decisions affecting the Complainant's membership in the union. It follows that I also find that obtaining the medical consultant's opinion was either a use within the terms of section 17(d) or a disclosure within the terms of section 20(m). In either case, the Complainant's consent was not required, and therefore, the provision of the medical reporting to the medical consultant did not contravene section 7(1) of PIPA.

Issue C: Did the Organization use the Complainant's personal information in contravention of, or compliance with, section 16 of PIPA?

Issue D: Did the Organization disclose the Complainant's personal information in contravention of, or compliance with, section 19 of PIPA?

[para 29] Section 16 of PIPA imposes a duty on organizations to use personal information only for purposes that are reasonable. It states:

16(1) An organization may use personal information only for purposes that are reasonable.

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

[para 30] Section 19 of PIPA imposes a duty on organizations to disclose personal information only for purposes that are reasonable. It states:

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

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

[para 31] The Complainant argues:

For this to be considered reasonable the [IBEW] would have had to at least send the information to a doctor who had the needed qualifications and Dr. [...] does not have that. Again the [IBEW] was provided a list of doctors who does have the specialty of dealing with Asperger's Syndrome and A.D.D. and they failed to even use that list. If the [IBEW] truly wanted to understand they would have at least contacted the correct doctor.

Therefore the [IBEW] and McGown Johnson did not have implicit consent in this matter because the actions were not reasonable because the doctor cannot provide them with the needed information about my disability and does not have the needed [specialty] to deal with the situation. Sending my information to a doctor with no qualifications in Asperger's Syndrome or A.D.D is not reasonable and therefore not implicit consent. Also there was no benefit to me by sending my personal information to a doctor who is of the wrong specialty.

[para 32] IBEW provided the Complainant's medical reporting to a medical consultant in order to obtain his opinion and assessment of the medical reporting, which in turn, was intended to assist IBEW to ensure that it complied with the AHRA and the LRC in relation to the Complainant's membership. In my view, IBEW's reasons for providing the information to the medical consultant, whether doing so is termed a use or a disclosure, are reasonable. Moreover, I am satisfied that IBEW provided only the information necessary for meeting its purposes in obtaining the medical consultant's opinion.

[para 33] The Complainant objects to the medical consultant's credentials and argues that IBEW's provision of his medical reporting to the consultant is unreasonable because the medical consultant lacks expertise to interpret his reporting. However, I note that the records indicate the medical consultant is a practising psychiatrist. I see no reason to doubt the qualifications of the psychiatrist or his ability to explain the significance of the medical reporting or the conditions to which it refers and their impact on the Complainant's employment relationships.

[para 34] To conclude, I find that the Organization's decision to provide the Complainant's medical reporting to the medical consultant did not offend either section 16 or 19 of PIPA.

V. ORDER

[para 35] I make this Order under section 52 of the Act.

[para 36] I confirm that the Organization did not fail to meet its duties to the Complainant under PIPA when it provided his medical information to the medical consultant.

Teresa Cunningham
Adjudicator