

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER P2015-07

June 10, 2015

ST. PAUL GRAZING RESERVE ASSOCIATION

Case File Number P2268

Office URL: www.oipc.ab.ca

Summary: An individual made a complaint to this office under the *Personal Information Protection Act* (PIPA) that the St. Paul Grazing Reserve Association (the Organization) disclosed his personal information without authority to do so. The Complainant states that the Organization sent an email containing his personal information to the County of St. Paul (the County), at the County's request. The County forwarded the email to counsel for the Evergreen Waste Management Services Commission (of which the County is a member) for the Commission's use in a legal proceeding before the Environmental Appeals Board (the Board). Neither the Organization nor the Complainant was a party in the legal proceeding.

The Organization argued that the information about the Complainant in the email was not his personal information, but was about his agricultural business. The Adjudicator determined that the information was about the Complainant's business and was not his personal information as defined in PIPA. Therefore, the disclosure of the information about the Complainant was not subject to PIPA.

Statutes Cited: AB: *Personal Information Protection Act*, S.A. 2003, c. P-6.5, ss. 1, , 52, *Public Lands Act*, R.S.A. 2000, c. P-40, s. 105.

Authorities Cited: AB: Orders P2006-005, P2012-08.

I. BACKGROUND

[para 1] An individual made a complaint to this office under the *Personal Information Protection Act* (PIPA) that the St. Paul Grazing Reserve Association (the Organization) disclosed his personal information without authority to do so. The Complainant states that the Organization sent an email containing his personal information to the County of St. Paul (the County); this email was copied to Alberta Environment and Sustainable Resource Development (Environment) and subsequently forwarded to other public bodies involved in a legal proceeding before the Environmental Appeals Board (the Board). Neither the Organization nor the Complainant was a party in the legal proceeding.

[para 2] The email contained information regarding membership dues owed to the Organization.

II. ISSUES

[para 3] The Notice of Inquiry, dated October 29, 2014, states the issues for inquiry as the following:

Did the Organization disclose information relating to the Complainant?

If yes, was the information the Complainant's personal information as that term is defined within section 1(1)(k) of the Act? If yes,

Did the Organization have the authority to disclose the information without consent, as permitted by section 20 of the Act?

Did the Organization have a duty to make every reasonable effort to ensure the information was accurate and complete as required by section 33 of the Act, and if so, did it fulfill this duty?

[para 4] By letter dated February 3, 2015, I added the following issues to the inquiry:

Is the Organization a “non-profit organization” as defined in section 56(1)(b) of the Act?

If yes, was the Organization’s disclosure of the Complainant’s personal information “in connection with a commercial activity”, within the terms of sections 56(1)(a) and 56(3) of the Act?

[para 5] Because PIPA governs the collection, use, and disclosure of only *personal* information, I will first answer the question regarding whether the information at issue is the Complainant’s personal information.

III. DISCUSSION OF ISSUES

Was the information the Complainant's personal information as that term is defined within section 1(1)(k) of the Act?

[para 6] “Personal information” is defined in section 1(1)(k) of the Act as “information about an identifiable individual.” The Organization argues that the information it disclosed about the Complainant is not his personal information but rather is information about the Complainant as an organization. The Organization states that the information in the email about the Complainant is about membership and grazing allotments, which is about a business; it states that grazing allotments are granted to agricultural businesses.

[para 7] Previous orders of this Office have stated that information about individuals acting in a professional capacity (information about work duties) is not personal information within the meaning of the Act, unless it has a personal dimension. In Order P2006-005 former Commissioner Work 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.

[para 8] In Order P2012-08, the adjudicator considered whether information about an organization can also be personal information about an individual such that PIPA would apply. She said (at paras. 16, 18-19):

The question becomes whether information about an individual acting in a commercial capacity, or an individual acting as a representative of a corporation, such as a director, is personal information within the terms of section 1(1)(k).

...

If information about an individual acting solely in a commercial capacity, or solely in a capacity as a representative of an organization, is to be interpreted as personal information, then this interpretation would have the effect of protecting information rights of some, but not all, organizations. An organization collecting the business information of sole proprietors or single shareholder corporations would arguably be required to comply with PIPA when they do so, even though it would not be necessary to do so in the case of a larger organization. Such a result would appear to be entirely arbitrary, given that both small and large organizations may conduct the same business and be required to furnish the same kinds of information to other organizations. In my view, the better approach is to consider that information that is about an individual acting solely in the individual’s capacity as a representative of an organization, or in a commercial capacity is not personal information for the purposes of section 1(1)(k).

In saying this, I do not mean that information about an individual acting in a commercial capacity is never personal information. If such information appears in the context of information about the individual in a personal capacity, such as the case where an individual is subjected to disciplinary proceedings arising from actions taken in a representative capacity, then the information may be personal information within the terms of section 1(1)(k). However, information that is solely about an individual acting in a commercial or representative capacity in circumstances where the information lacks a personal dimension, will not fall within section 1(1)(k).

[para 9] I agree with the above analyses. In this case, the information at issue is information contained in an email and is about outstanding fees owed to the Organization. The email speaks in terms of outstanding fees owed by the Complainant; however, the Organization's arguments indicate that these fees are owed by the Complainant's agricultural operation, rather than by the Complainant as an individual.

[para 10] The Organization has provided me with a copy of the Head Tax Grazing Permit Regulations to support its claim that information about the Complainant's grazing status is information about him as a business. The Organization had argued that this Regulation supports its claim that only persons operating a ranch or farm were eligible for grazing allotments. I note that this Regulation is dated 1963, and is no longer in force (it appears to have not been in force for quite some time).

[para 11] However, the enabling statute for that Regulation was the *Public Lands Act*, which is still in force. Section 105 of that Act states:

When a grazing lease is held by a grazing association, the land contained in the lease shall be used for the benefit of its members who are operating farms in the vicinity, if they qualify for grazing privileges under the bylaws of the association.

[para 12] This provision supports the Organization's claim that its members (persons to whom grazing allotments are granted) are operating a business – farms – and that membership information (including payment for the membership) is information about that business, rather than personal information about an individual.

[para 13] The Complainant did not directly address the Organization's claim that he was operating as a business; however, he indicated that the conclusion that "contracts which are in personal names are considered commercial based on the idea they are operators of a business, farm or ranch" is erroneous and that the information at issue is about him as an identifiable individual.

[para 14] By letter dated February 3, 2015, I asked both parties to address the following question:

Was the information about the Complainant (i.e. information about his membership and grazing allotments) about the Complainant as an individual or did it relate to his business? Please provide evidence if possible.

[para 15] Although he responded to other questions posed in that letter, the Complainant did not respond to the above question. The Organization's claim that the information about the Complainant's past membership with the grazing reserve is about the Complainant's agricultural business is supported by section 105 of the *Public Lands Act*, cited above. The Complainant had an opportunity to rebut this claim, by explaining how the status of the payment of dues by his agricultural operation could be said to have a personal dimension or be his personal information, but did not. The Complainant's name is his personal information in some contexts; however, when it appears in the course of his doing business as a farm or ranch operator, absent some particular circumstance giving it a personal dimension, it is not information *about him* and is therefore not his personal information in that context. The information about membership fees owed or paid by his agricultural business is also not personal information about the Complainant unless some personal aspect is shown. Therefore, PIPA does not govern the collection, use or disclosure of that information.

[para 16] As I have found that the information disclosed by the Organization is not the Complainant's personal information within the terms of section 1 of the Act, and therefore PIPA does not apply to that disclosure, I do not need to consider the remaining issues set out in this inquiry.

IV. ORDER

[para 17] I make this Order under section 52 of the Act.

[para 18] I find that the information disclosed by the Organization is not the Complainant's personal information. Therefore, the Act does not apply to the Organization's disclosure of the information at issue.

Amanda Swanek
Adjudicator