

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER P2016-01

January 11, 2016

GIBBS GAGE ARCHITECTS

Case File Number P2662

Office URL: www.oipc.ab.ca

Summary: The Applicant made a request to Gibbs Gage Architects (the Organization) for information relating to his employment, including information on personnel files and other information maintained by the Organization.

The Organization provided the Applicant with his personnel file and tax, benefits, and compensation files.

The Applicant requested review by the Commissioner of the Organization's response. He complained that the Organization had not met its duty to assist him, as it had failed to produce emails, correspondence, investigation reports, and meeting minutes containing references to him and the decision to terminate his employment.

The Adjudicator determined that the records the Applicant was seeking did not consist of information solely about him. She held that the Organization was not obliged to provide such information to the Applicant under PIPA. She also found that the Organization was not required to sever the records to provide the Applicant with fragments or "snippets" of personal information that were known to him, and clearly not the information he sought in making the access request. As the Organization had searched for the Applicant's personal information and provided it to him, and as the records the Applicant argued should have provided contained information other than his personal information, the Adjudicator found that the Organization had met its duty to assist the Applicant under section 27 of PIPA.

Statutes Cited: AB: *Personal Information Protection Act* S.A. 2003, c. P-6.5 ss, 1, 24, 27, 52

Authorities Cited: AB: Decision P2011-D-003, Orders P2006-004, P2006-005, P2012-09, P2015-05

I. BACKGROUND

[para 1] On November 12, 2013, the Applicant made a request to Gibbs Gage Architects (the Organization) for access to the following:

[...] information relating to my employment with you but [my request] is not limited to personal employee information, as defined in PIPA. Records being sought include all information on your personnel file as well as all documents relating to me maintained by persons in your organization, such as separate files, telephone notes, etc. Please note that my right to access records is not limited to hard copy documents and includes electronic documents, including e-mail correspondence. Pursuant to section 26(2) of PIPA, I have the right to choose either to view the records or have a copy provided to me.

[para 2] The Organization provided the Applicant with his personnel file, and tax, compensation, and benefits files on December 20, 2013.

[para 3] The Applicant requested review of the Organization's response to him. The Commissioner authorized mediation to resolve the dispute between the Applicant and the Organization. Mediation was unsuccessful and the Applicant requested an inquiry. He requested an inquiry in relation to the following information that the Organization had not provided:

- Copies of all complaints against or involving [the Applicant]
- Copies of all witness statements
- Copies of the respondent's statement, or the investigator's notes of respondent's version of events
- Copies of the investigator's report
- Minutes from the meeting of the decision-maker as to whether the facts found by the investigator mean that harassment within the meaning of Gibbs Gage's policy occurred
- Minutes from the meeting of the partners in which discipline - the performance improvement plan - was determined to be appropriate
- Minutes from the meeting of the partners in which the decision to terminate [the Applicant] was made
- All emails between management and HR with respect to [the Applicant] or his performance
- All emails between management and HR with respect to any complaints against or involving [the Applicant] as well as with respect to the proposed [performance] improvement plan
- All internal emails between GGA staff with respect to [the Applicant]
- Copies of [the Applicant's] email dated October 22, 2013 expressing his desire to work with GGA to resolve the issues leading to imposition of the [performance] improvement plan and his subsequent email in which he suggested alternative wording for the plan
- All notes, electronic or hand-written, made by any of the partners or HR staff with respect to [the Applicant]
- Information as to how GGA has used personal employee information about you [*sic*] or disclosed personal employee information to third parties.

- The names of any third parties to whom personal employee information has been shared and the circumstances of that disclosure (both during [the Applicant's] employment and after termination of his employment).

II. ISSUES

Issue A: Is the access request for the Applicant's personal information?

Issue B: Did the Organization comply with section 27(1)(a) of the Act?

III. DISCUSSION OF ISSUES

Issue A: Is the access request for the Applicant's personal information?

[para 4] The Organization argues:

Accordingly, from [the Applicant and his counsel's] letters, we respectfully submit, that [the Applicant] has sought access to his personal information in his personnel file (which was provided, together with his the tax, compensation and benefits files) and the records of the Organization in respect of the allegations / complaints made against him by his former employer or former colleagues.

From the list submitted with his January 25, 2015, we respectfully submit that [the Applicant] has sought more than his personal information. Personal information is defined in PIPA to be "information about an identifiable individual". The Officer of the Privacy Commissioner has found that the word "about" is to be given significance, and personal information does not include information merely related to the person (see Order P2006-004) [...]

Further we note that an applicant is only entitled to the personal information in a record (subject to exceptions and whether it is reasonable to provide the information) and is not entitled under PIPA to any information that is not about the applicant (see Order P2014-01).

In addition, we note that in decision P2011-D-003, former Commissioner Work commented that in some cases, personal information will amount to meaningless or insignificant "snippets" of information contained in a record. In particular, Commissioner Work stated:

I note as well that on the basis of the ability of organizations to take into account what is reasonable in responding to access requests under section 24 of the Act, it is open to an organization to argue, in appropriate circumstances, that it is not reasonable to provide access to an applicant's personal information, or parts of this information. This may apply for information that consists of meaningless or insignificant snippets, particularly if it reveals nothing of substance to an applicant. It may also apply where providing information would require an organization to review a large volume of information only to provide an applicant with minor items of information of which he is already well aware [...]

Similarly, the Adjudicator found in Order P2014-01, that:

. . . information falling under "succession plan meeting minutes" might contain references to the Applicant, but might not be *about* the Applicant. Similarly, "correspondence, e-mails or letters between the corporate Chairman, CEO/ President, Managing Director or Principal Operating Subsidiary President", even if they are

addressed to the Applicant, may not contain the Applicant's personal information, other than the Applicant's name.

Accordingly, we respectfully submit that many of the records that [the Applicant] has requested do not contain his personal information, or if they do, then such information constitutes 'snippets' of information which would reveal nothing of substance to an applicant.

[para 5] Section 1(1)(k) of PIPA defines personal information as information “about an identifiable individual”.

[para 6] Section 24(1) of PIPA authorizes an applicant to request the applicant’s personal information from an organization. This provision states:

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

(b) to provide the individual with information about the use or disclosure of personal information about the individual.

“Personal information” is defined in section 1(1)(k) of PIPA as meaning “information about an identifiable individual”. PIPA does not authorize an applicant to make an access request for anything other than the applicant’s own personal information. There is no duty in PIPA for an organization to provide information to an applicant that is not the applicant’s personal information or to search for it. When determining whether an organization has met its duty to assist an applicant, it is therefore necessary to consider whether the information at issue is personal information.

[para 7] An applicant is entitled to the personal information in a record (subject to exceptions and whether it is reasonable to provide the information) and is not entitled under PIPA to any information that is not about the applicant. For example, if a record contains some information that may be construed as information “about the applicant” but also contains information that is not about the applicant, then the applicant may request the applicant’s personal information where it appears in the record, but not any of the other information in the record.

[para 8] In Order P2012-09, the Adjudicator commented that not all the information in an individual’s personnel file is about the individual, such that it could be said to be “personal information”. She said:

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.

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 9] In Order P2006-004, former Commissioner Work commented that most information in legal files will not be personal information within the terms of PIPA. He said:

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. In this case, only a part of the information that the [applicant] asked for was information "about" him. Had he relied on PIPA to obtain information, he would not have received much of the information that was made available to him under the *Legal Profession Act* and the Rules created thereunder, or pursuant to the requirements of fairness.

...

I do not need to decide for the purpose of this inquiry precisely which parts of the information in the documents collected or created for the purpose of the complaint proceedings were "personal information" of the [applicant], as that term is to be understood in PIPA. It is sufficient to say that there is a great deal of information in the documents that is not the [applicant's] personal information even though it was generated in consequence of his complaints. The latter includes information about the persons about whom he complained and their dealings with the [applicant], information about other third parties and their dealings with the [applicant], descriptions of various events and transactions, and correspondence and memos related to the handling of the complaints and other aspects of the complaint process. As well, the fact the [applicant] was the author of documents does not necessarily mean that the documents so authored were his personal information.

[para 10] In Decision P2011-D-003, former Commissioner Work held that the majority of information in a lawyer's file relating to an applicant will not be the personal information of the applicant. He said:

In my view, there is likely to be a close parallel between the type of information that is in the "client file" held by the law firm, and the type of information described in the paragraphs just quoted. The fact the file contains information related to one of the Applicants because he was the opposing party in the legal matters does not of itself make the information "about him".

What is “about him” is information such as what he has said or expressed as an opinion, the fact he has done certain things or taken certain steps, details of his personal history, and personal details about him such as his name and other associated information such as where he lives or his telephone number. This is not meant to be an exhaustive list, but is provided to illustrate the type of information that is personal information, in contrast to information other than this type of information, that was generated or gathered by the law firm or its client for the purpose of pursuing the litigation. The point is that much or most of the latter may well not be the first Applicant’s personal information even though it relates to a legal matter that involved him. An obvious example would be legal opinions given to the law firm’s client as to how to deal with the litigation with the Applicant or associated legal matters. The way in which the law firm was advising its client and dealing with the legal matters may have affected the Applicants, but it was not “about” them in the sense meant by the definition of personal information in the Act. (This information would also be privileged, but the point here is that much or most of it would likely not be the Applicant’s personal information within the definition of the term contained in the Act.) [my emphasis]

[para 11] In Order P2006-005, former Commissioner Work commented on the purpose of the access provisions in PIPA, which he contrasted with the access provisions in freedom of information legislation:

Because a primary purpose of FOIPPA is to provide access to information, access requests are interpreted broadly. In contrast, [PIPA] is intended to protect personal information and to govern the purposes for which an organization may collect, use and disclose personal information. Access requests under [PIPA] are therefore not given a broad interpretation as they are under [the FOIP Act], since the right to make an access request under [PIPA] is intended only to enable an individual to determine whether his or her personal information is being collected, used and disclosed by an organization in accordance with [PIPA]. [PIPA] does not authorize an individual to request information other than the individual's own personal information.

[para 12] The records the Applicant has requested may contain some personal data about him, such as his name and the previous and current status of his employment with the Organization. However, the records would, by their description, also contain information merely relating to him, or alternatively, information that is not about him and does not relate to him. Information about the Organization’s decisions to handle complaints relating to the Applicant in a particular way and which may have affected the Applicant, does not constitute information “about the Applicant”, although it can be said to relate to him. Information contained in “minutes from the meeting of the decision-maker as to whether the facts found by the investigator mean that harassment within the meaning of Gibbs Gage’s policy occurred”, as requested by the Applicant, would not be “about” the Applicant although there may be references to him within the minutes.

[para 13] In Order P2015-05, the Director of Adjudication illustrated the distinction between personal information and information referring to an applicant. She said:

With respect to such information, I agree with the reasoning in the decision of Commissioner Work, cited above, as well as the reasoning of the Adjudicator in Order P2012-04. Insofar as this withheld information consists of the intentions, ideas and opinions of the other employees, it does not consist *solely* of the Applicant’s personal information, nor does some of it consist of his personal information at all.

To illustrate the latter point, X's statement that "I believe we should take steps a, b and c to deal with Y's employment complaint" is not Y's personal information. While the fact Y has made an employment complaint is Y's personal information, the steps X believes should be taken to address it, though related to Y, are not. Ultimately, if the steps are taken and affect Y's situation, this may, at that point, be Y's personal information, for example, that Y accepted a new position. However, the intervening considerations or discussions by others about the merits of the complaint and how to resolve it, are not. Most certainly they are not if the suggested steps are never effected. Even if they are, only the way Y's situation is affected by the outcome, and not why and by whom this was effected, is personal information in the sense of being "about Y" within the terms of the Act.

Similar considerations apply to notes of some of the meetings in which the Applicant was present. One of the sets of notes withheld by reference to litigation privilege appears to simply record the Applicant's statements about his views and positions, and his observations of events, recorded in what seems to be a non-subjective way, and on this account is his personal information (these notes will be discussed further below at para 46, and paras 85 to 87). However, other notes, even though recording a situation in which the Applicant was present, document positions others were taking and explanations they were giving for decisions that had been made, which is not the Applicant's personal information.

[para 14] I agree with the reasoning of the Director of Adjudication in the foregoing excerpt. Applying this reasoning to the case before me, I find that the information he indicates is lacking from the Organization's response, and which is detailed in the background above, that is, complaints against, or involving, the Applicant, witness statements, the respondent's statement, an investigator's notes, minutes, emails between management and human resources regarding the Applicant's performance, a proposed performance plan and emails containing references to the Applicant and meeting minutes documenting the Organization's decision to terminate the Applicant, do not constitute his personal information as the information is not "about the Applicant" but is about problems that had arisen in the Organization and the solutions the Organization was considering, and did consider, to address them.

[para 15] The Applicant's email in which he expressed his willingness to resolve issues with the Organization and suggesting changes to a proposed performance plan similarly does not consist entirely of his personal information, as this correspondence, by its description, contains information about a proposed course of action involving the Organization and himself, and is not "about the Applicant". The statement that the Applicant is willing to resolve issues is his personal information, but statements about issues in the work place to be resolved are not. I will address the portion of the letter regarding the Applicant's willingness to resolve issues in the portion of this order addressing the duty to assist, below.

[para 16] From the Applicant's submissions, I conclude that he is primarily seeking information relating to, or affecting, himself, as opposed to information that is about him. However, such information is not personal information within the terms of PIPA. At the same time, I acknowledge that there will be some information in the requested records that could be said to be factual information about the Applicant and I will address that information in my analysis regarding the Organization's compliance with the terms of section 27 of PIPA.

Issue B: Did the Organization comply with section 27(1)(a) (Duty to Assist) of the Act?

[para 17] The Applicant is primarily concerned that the Organization has not met its duty to assist him as it has not provided all the information he anticipated he would receive when he made the access request.

[para 18] The Organization responds that it provided the Applicant with his complete personnel, tax, benefit, and compensation files. It reviewed all the records the Applicant has requested and determined that most of the information in these records, other than the records it has provided, is not the Applicant's personal information. It also provided him with information about procedures by which he could obtain the records he is currently seeking; specifically, the Applicant was told that if he brought a lawsuit against the Organization, many of the records he was seeking could be obtained through the litigation process.

[para 19] The position of the Organization is that it has provided all the information to the Applicant all the responsive information in its custody or control that the Applicant is entitled to receive under PIPA:

[...] we respectfully submit that many of the records that [the Applicant] has requested do not contain his personal information, or if they do, then such information constitutes "snippets" of information which would reveal nothing of substance to an applicant.

At the time of his access request, [the Applicant] was well aware that his employment was terminated as a result of an investigation into his conduct in the work place. In fact, [the Applicant] was in the process, through counsel, of trying to obtain a settlement related to such termination.

While [the Applicant] wanted access to the records related to the investigation into his conduct at the Organization, PIPA specifically excludes such records from the access right created in section 24 of the Act. The right of access to personal information is not absolute.

Further, the right of access to personal information is not a substitute for documentary discovery under the Rules of Court. As noted by Commissioner Work above, the access right under PIPA will provide much less information than that which would be made available under a judicial proceeding or pursuant to the requirements of fairness.

Had [the Applicant] wished access to the requested records, then he could have commenced an action against the Organization and sought such records through the discovery process under the Rules of Court.

Instead, [the Applicant] has tried to use the access right under PIPA to access records which either do not include his personal information or which are exempt from disclosure under Section 24 of PIPA.

Accordingly, we respectfully submit that the records responsive to [the Applicant's] request at issue are only those records that contain his personal information (namely, information about [the Applicant] but excluding those records that contain mere "snippets" of information which reveal nothing of substance to [the Applicant] and which are related to the allegations / complaints made against him leading to his termination by the Organization.

[para 20] Section 24 of PIPA creates the ability to make a request for access to recorded personal information in the custody or control of an organization. It states:

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*
- (b) to provide the individual with information about the use or disclosure of personal information about the individual.*

(1.1) Subject to subsections (2) to (4), on the request of an applicant made under subsection (1)(a) and taking into consideration what is reasonable, an organization must provide the applicant with access to the applicant's personal information where that information is contained in a record that is in the custody or under the control of the organization. [my emphasis]

(1.2) On the request of an applicant made under subsection (1)(b), and taking into consideration what is reasonable, an organization must, if the organization has in its custody or under its control a record containing personal information about the applicant described in the request, provide the applicant with

- (a) information about the purposes for which the personal information has been and is being used by the organization, and*
- (b) the names of the persons to whom and circumstances in which the personal information has been and is being disclosed.*

(2) An organization may refuse to provide access to personal information under subsection (1) if

- (a) the information is protected by any legal privilege;*
- (b) the disclosure of the information would reveal confidential information that is of a commercial nature and it is not unreasonable to withhold that information;*
- (c) the information was collected for an investigation or legal proceeding;*
- (d) the disclosure of the information might result in that type of information no longer being provided to the organization when it is reasonable that that type of information would be provided;*
- (e) the information was collected by a mediator or arbitrator or was created in the conduct of a mediation or arbitration for which the mediator or arbitrator was appointed to act*

- (i) under an agreement,*
- (ii) under a statute of Alberta or of Canada or of another province of Canada,*

- (iii) *under a regulation of Alberta, a regulation of Canada or similar subordinate legislation of another province of Canada that, if enacted in Alberta, would constitute a regulation of Alberta,*
- (iv) *under a legislative instrument of a professional regulatory organization, or*
- (v) *by a court;*

(f) *the information relates to or may be used in the exercise of prosecutorial discretion.*

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

- (a) *the disclosure of the information could reasonably be expected to threaten the life or security of another individual;*
- (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.*

(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 21] Section 27 of PIPA creates a duty in an Organization to make reasonable efforts to assist applicants who make access requests under section 24. It states, in part:

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 making a request under section 24(1)(a) 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 22] Section 24(1.1) permits an organization to take into consideration “what is reasonable” when responding to an access request. In addition, the extent to which an organization must make efforts to assist an applicant is qualified in section 27(1) by the phrase “as reasonably possible.” Section 24 also authorizes an organization to withhold certain kinds of information even if the information is the subject of an access request, such as information over which it is asserting legal privilege. Section 24 also requires an organization not to provide any personal information of an applicant that would reveal the personal information of another individual or that would reveal the identity of an individual who has provided a confidential opinion regarding an applicant.

[para 23] In Decision P2011-D-003, former Commissioner Work commented that in some cases, personal information will amount to meaningless or insignificant “snippets” of information contained in a record. He noted that it may be reasonable for an organization not to provide such information to an applicant if the information is already known to the applicant or is meaningless, or would take a considerable amount of time and effort to locate and then sever from the record. He said:

I note as well that on the basis of the ability of organizations to take into account what is reasonable in responding to access requests under section 24 of the Act, it is open to an organization to argue, in appropriate circumstances, that it is not reasonable to provide access to an applicant's personal information, or parts of this information. This may apply for information that consists of meaningless or insignificant snippets, particularly if it reveals nothing of substance to an applicant. It may also apply where providing information would require an organization to review a large volume of information only to provide an applicant with minor items of information of which he is already well aware [...]

[para 24] In my view, the Organization has met its duty to assist the Applicant. It has provided the Applicant with his personnel file, and other records containing information solely about the Applicant. It has not provided information that is not the Applicant's personal information, and it has also elected to withhold some of the Applicant's personal information in instances where section 24 authorizes or requires it to withhold it. As the Applicant has not requested review of the Organization's application of section 24, the issue of whether the Organization properly applied section 24 is not before me. I agree with the Organization that it is not reasonable for it to sever documents so that it can provide the Applicant with his name or other personal information already known to him where such personal information is contained in records that are not otherwise about the Applicant.

[para 25] To return to the email in which the Applicant expressed his willingness to work with his employer to resolve issues, statements regarding his wishes are his personal information, but statements regarding proposed resolutions between the Applicant and the Organization are not. The Applicant is already aware of what his position was, and it is not clear that he would want only the portions of this email that constitute his personal information. He is not entitled to receive the entire email under PIPA, despite being the author it, because the email contains information that is not about him. As the Applicant would be familiar with his personal information where it appears in the email, it seems unlikely that he would want to have it severed from the email and

provided to him. The Applicant has not presented any argument or evidence in the inquiry that would indicate that he is seeking those portions of the records that contain his personal information. Rather, it appears that he is seeking information that is not about him. In the absence of an indication from the Applicant that he is seeking meaningless or disjointed snippets or fragments of information about him that are already known to him, as described by former Commissioner Work in Order P2011-D-003, it is not reasonable to anticipate that he is seeking this information. As a result, I find that the Organization's decision not to provide severed fragments of personal information from the email is reasonable.

[para 26] The Applicant does refer to not receiving the names of persons to whom the Organization has disclosed his personal information. It is true that section 24 permits a requestor to request information about the use and disclosure of the requestor's personal information. However, I am unable to interpret the Applicant's access request as a request for information about the use and disclosure of his personal information. As it does not appear that the Applicant requested information about the use and disclosure of his personal information in his access request, I am unable to address this issue. However, I note that it appears to be open to the Applicant to request that the Organization provide him with information about the use or disclosure of personal information about him. Once he has done so, the Organization would then be required by section 27(1) to provide information about the manner in which the Applicant's personal information has been used or disclosed.

IV. ORDER

[para 27] I make this Order under section 52 of the Act.

[para 28] I confirm that the Organization met its duty to assist the Applicant.

Teresa Cunningham
Adjudicator