

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER P2017-08

October 27, 2017

BISHOP & McKENZIE LLP

Case File Number P2776

Office URL: www.oipc.ab.ca

Summary: The Complainant complained that Bishop & McKenzie LLP (the Organization) collected, used and/or disclosed his personal information in contravention of the *Personal Information Protection Act* (the Act) when it received a copy of his Worker's Compensation file from a client and it was subsequently used in an Affidavit filed in a civil claim.

The Adjudicator found that the Organization had the authority to collect, use and/or disclose the information in the Complainant's WCB file pursuant to sections 14, 17, 19, and 20 of the Act.

Statutes Cited: **AB:** *Personal Information Protection Act*, S.A. 2003, c. P-6.5, ss. 1, 7, 11, 14, 15, 16, 17, 18, 19, 20, 21 and 52.

I. BACKGROUND

[para 1] Bishop & McKenzie LLP (the Organization) was retained by the Complainant's former employer to commence an action against the Complainant for breach of contract and breach of fiduciary duties. On February 3, 2014, the Organization filed a Statement of Claim on behalf of its client naming the Complainant as a defendant (the civil claim).

[para 2] During the course of the litigation, the Organization was provided by its client information from a Workers' Compensation Board complaint file made by the Complainant. The information allegedly consisted of defamatory statements about the Organization's client made by the Complainant.

[para 3] On April 4, 2014, the Organization sent a letter to the Complainant's legal counsel indicating that the Complainant's complaints to the WCB were retaliation for the Statement of Claim and stating that on the basis of the information from the WCB complaint, the Statement of Claim in the civil claim would be amended to include a claim for defamation. On April 17, 2014, the Organization's client swore and the Organization (on behalf of its client) filed an Affidavit including this information in its civil claim. After this, the WCB advised the Organization's client that it had used the information in contravention of the intended use.

[para 4] On May 14, 2014, the WCB advised the Complainant that it had conducted a review of the disclosure of the Complainant's information to the Organization's client and found that because the Organization's client was not subject to the *Workers' Compensation Act* (WCA) that the information should not have been disclosed.

[para 5] On May 20, 2014, the Complainant submitted a complaint to the Office of the Information and Privacy Commissioner (this Office). Mediation was authorized but was not successful in resolving the issues between the parties and on January 13, 2016, this Office received a Request for Inquiry from the Complainant. I received submissions from both parties.

II. ISSUES

[para 6] The Notice of Inquiry dated September 20, 2016 state the issues in this inquiry as follows:

1. Did the Organization collect, use and/or disclose "personal information" of the Complainant as that term is defined in section 1(1)(k) of the Act?
2. If the answer to question 1 is yes, did the Organization collect, use and/or disclose the information contrary to, or in compliance with, section 7(1) of PIPA (no collection, use or disclosure without either authorization or consent)? In particular,

Did the Organization have the authority to collect, use and/or disclose the personal information without consent as permitted by sections 14, 17 or 20 of PIPA?

3. Did the Organization collect, use or disclose the information contrary to, or in accordance with, sections 11(1), 16(1) and 19(1) of PIPA (collection, use and/or disclosure for purposes that are reasonable)?

4. Did the Organization collect, use or disclose the information contrary to, or in accordance with, sections 11(2), 16(2) and 19(2) of PIPA (collection, use and/or disclosure to the extent reasonable for meeting the purposes)?
5. Did the Organization collect, use and/or disclose “personal employee information” of the Complainant as that term is defined in section 1(1)(j) of the Act?
6. If the answer to question 5 is yes, did the Organization disclose the “personal employee information” in contravention of, or in compliance with, section 7(1) of PIPA (no collection, use or disclosure without either authorization or consent)? In particular,

Did the Organization have the authority to collect/use/disclose the information without consent as permitted by sections 15, 18 and 21 of PIPA?

III. DISCUSSION OF ISSUES

1. Did the Organization collect, use and/or disclose "personal information" of the Complainant as that term is defined in section 1(1)(k) of the Act?

[para 7] Personal Information is defined by section 1(1)(k) of the Act as follows:

1(1)(k) “personal information” means information about an identifiable individual.

[para 8] The information from the WCB complaint was about the claim made by the Complainant. Therefore the information at issue is the Complainant’s personal information.

2. If the answer to question 1 is yes, did the Organization collect, use and/or disclose the information contrary to, or in compliance with, section 7(1) of PIPA (no collection, use or disclosure without either authorization or consent)?

[para 9] Section 7(1) of the Act 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 10] There is no evidence and neither party argues that the Complainant consented to the collection, use and/or disclosure of his personal information by the Organization. Therefore, I find that the Complainant did not consent to the collection, use and/or disclosure of his personal information by the Organization. The Organization can still have the authority to collect, use, and/or disclose the Complainant's personal information without consent pursuant to sections 14, 17, and 20 of the Act, which I will examine below.

a. Collection (section 14 of the Act)

[para 11] As outlined above, the Organization collected the Complainant's personal information from its client. At the time of the collection the Complainant and the Organization's client were engaged in active civil litigation. The portion of section 14 of the Act relevant to this inquiry states:

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

...

(d) the collection of the information is reasonable for the purposes of an investigation or a legal proceeding;

[para 12] "Legal proceeding" is defined by section 1(1)(g) of the Act and would encompass the civil claim. Section 1(1)(g) of the Act states:

1(1)(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 13] The Complainant argues that the Organization's client collected his personal information under false pretenses (in order to further its litigation and not to manage his disability claim). Specifically, he states:

The only reason that [the Organization's client] would have collected this information was in pursuit of information for his litigation against me. The WCB clearly stated that there was no coverage at the time he requested the file, and as per the WCB, there was no

reason for the file to be released. Clearly the intent of the [Organization and its client] was to use this information specifically in their litigation. As such they obtained the file containing my personal information under false pretenses, (claiming they needed it for the management of my disability claim) and immediately used it in the litigation, and threatened to request more medical information. Even when contacted by the WCB they failed to respond, and advised my counsel they would seek board approval to use this information.

(Complainant's initial submission at page 2)

[para 14] The Organization states that its collection of the information from the WCB complaint was reasonable for the purposes of a legal proceeding. It is evident from the affidavit that was filed by the Organization on behalf of its client that the information was used in a legal proceeding.

[para 15] Both the Complainant and Organization seem to be in agreement that the purpose of the collection was to further litigation against the Complainant. While the Complainant believes that the Complainant's client collected the information under false pretenses, I do not believe that this is determinative of whether the Organization had the authority pursuant to section 14(d) of the Act to collect the information from its client. Therefore, I find that the Organization's collection of the Complainant's personal information was permitted pursuant to section 14(d) of the Act. I also believe that this was reasonable but I will discuss that in greater detail below.

b. Use/Disclosure (sections 17 and 20 of the Act)

[para 16] Once the Organization collected the information from the WCB complaint from its client, it used the information to make an application to have the civil claim amended to include a claim for defamation. This included filing and, according to the Complainant, serving a supporting affidavit which disclosed the information from the WCB complaint to other parties named in the civil claim. As the provisions of sections 17 and 20 of the Act dealing with use and disclosure for the purpose of a legal proceeding use the same language, I will analyze both sections together.

[para 17] The Complainant argues that the use/disclosure of his personal information was improper because it was done for purposes that were not listed on the form signed by the Organization's client and that it did not return the information when requested to do so by the WCB. The Complainant states:

As such, it is my submission that they intentionally collected this confidential information from the WCB (and allegedly attempted to with their insurer), knowingly used it for a prohibited purpose, and failed to cease and desist and return the information when legally requested to. Finally, they made no attempt to mitigate the damage caused by their willful violation of the privacy of my information, or the extensive costs associated with the breach.

(Complainant's initial submission at page 2)

[para 18] The Organization states that it was authorized to use/disclose the information from the WCB complaint pursuant to sections 17(d) and 20(m) of the Act.

[para 19] Based on the arguments of the parties, the relevant portions of sections 17 and 20 state:

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;

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 20] The use/disclosure of the information from the WCB complaint was not for a purpose listed in the agreement signed by the Organization's client when the client collected the information from the WCB complaint. That being said, it is within the WCB's jurisdiction to enforce its own agreements. The fact that the agreement was breached is not determinative of whether the Organization had or did not have authority under section 17(d) and 20(m) of the Act to use/disclose the Complainant's personal information.

para 21] Both the civil claim and the defamation claim would be considered legal proceedings as defined in section 1(1)(g) of the Act because there is a remedy in law for both breach of contract and defamation. I believe that the use/disclosure was for the purpose of a legal proceeding. Therefore, I believe that the use/disclosure of this information to as part of an Affidavit in support of a defamation claim was reasonable for the purpose of the legal proceeding.

- 3. Did the Organization collect, use or disclose the information contrary to, or in accordance with, sections 11(1), 16(1) and 19(1) of PIPA (collection, use and/or disclosure for purposes that are reasonable)?**
- 4. Did the Organization collect, use or disclose the information contrary to, or in accordance with, sections 11(2), 16(2) and 19(2) of PIPA (collection, use and/or disclosure to the extent reasonable for meeting the purposes)?**

[para 22] Sections 11(1), 16(1), and 19(1) of the Act require that an organization may collect/use/disclose personal information only for purposes that are reasonable.

[para 23] I have found that the collection/use/disclosure of the Complainant's personal information was done for the purposes of a legal proceeding. I find that defending or advancing a legal proceeding is a reasonable purpose.

[para 24] Section 11(2), 16(2), and 19(2) of the Act require an organization to collect/use/disclose personal information only to the extent that is reasonable for meeting the purposes for which it was collected/used/disclosed.

[para 25] Based on the above, I find that the Organization collected, used, and/or disclosed the Complainant's personal information in accordance with sections 11(2), 16(2), and 19(2) of the Act.

5. Did the Organization collect, use and/or disclose "personal employee information" of the Complainant as that term is defined in section 1(1)(j) of the Act?

[para 26] Section 1(1)(j) of the Act defines "personal employee information" as follows:

1(1)(j) "personal employee information" means, in respect of an individual who is a potential, current or former employee of an organization, personal information reasonably required by the organization for the purposes of

(i) establishing, managing or terminating an employment or volunteer-work relationship, or

(ii) managing a post-employment or post-volunteer-work relationship

between the organization and the individual, but does not include personal information about the individual that is unrelated to that relationship;

[para 27] Given my findings above, I do not need to decide if the information was personal employee information.

6. If the answer to question 5 is yes, did the Organization disclose the "personal employee information" in contravention of, or in compliance with, section 7(1) of PIPA (no collection, use or disclosure without either authorization or consent)? In particular,

Did the Organization have the authority to collect/use/disclose the information without consent as permitted by sections 15, 18 and 21 of PIPA?

[para 28] Given my finding above, I will not make a finding regarding this issue.

V. ORDER

[para 29] I make this Order under section 52 of the Act.

[para 30] I find that the Organization was authorized to collect, use and/or disclose the Complainant's personal information pursuant to sections 14, 17, 19, and 20 of the Act.

Keri H. Ridley
Adjudicator