

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER P2018-02

August 13, 2018

**NINKOVICH GRAVEL LTD. and
SAFETY DOCUMENTS**

Case File Number: 001630/003293

Office URL: www.oipc.ab.ca

Summary: The Complainant complained that Safety Documents (the Safety Consultant) disclosed her personal information (that she had a back injury and made a WCB claim) to another trucking company in contravention of the *Personal Information Protection Act* (the Act).

The Adjudicator found that the Safety Consultant did not disclose the Complainant's personal information to the other trucking company.

Statutes Cited: AB: *Personal Information Protection Act*, S.A. 2003 c. P-6.5 ss. 1, 5, and 52.

I. BACKGROUND

[para 1] The Complainant was employed by Ninkovich Gravel Ltd. (the Organization) when she sustained a back injury. At the time of the injury, Safety Documents (the Safety Consultant) was working as an independent contractor for the Organization and also for another trucking company, J. Coulson Construction Ltd. (trucking company).

[para 2] The Complainant alleges that the Organization disclosed the fact that she had a back injury to the trucking company contrary to the *Personal Information Protection Act* (the Act).

[para 3] On September 1, 2015, the Complainant complained about this alleged disclosure to this Office. Mediation was authorized but did not resolve the matter and on June 20, 2016, the Complainant requested an inquiry.

II. ISSUES

[para 4] The Notice of Inquiry dated December 6, 2017 states the issues in this inquiry as follows:

1. Did Safety Documents disclose the Complainant's personal information to J. Coulson Construction Ltd.?
2. If Safety Documents disclosed the Complainant's personal information, did this Organization have the authority to collect / use / and disclose the information without consent, as permitted by sections 15, 18, and 21 of PIPA?
3. If Safety Documents did not have the authority to collect / use / disclose the information without consent, did the Organization obtain the Complainant's consent in accordance with section 8 of the Act, before collecting / using / disclosing the information?
4. If Safety Documents disclosed the Complainant's personal information from Ninkovich Gravel without authority, did Ninkovich Gravel make reasonable safety arrangements against the risk of unauthorized collection, use, and disclosure within the terms of section 34 of PIPA to prevent this outcome?

III. DISCUSSION OF ISSUES

[para 5] According to the information I have, the Safety Consultant was acting as an independent contractor, contracting with the Organization at the time of the alleged breach. Section 5(2) of the Act states:

5(2) For the purposes of this Act, where an organization engages the services of a person, whether as an agent, by contract or otherwise, the organization is, with respect to those services, responsible for that person's compliance with this Act.

[para 6] Therefore, the Organization is responsible for the Safety Consultant's compliance with the Act. However, section 5(6) of the Act states:

5(6) Nothing in subsection (2) is to be construed so as to relieve any person from that person's responsibilities or obligations under this Act.

[para 7] As a result, the Safety Consultant, as an organization, also has obligations that must be met under the Act.

1. Did Safety Documents disclose the Complainant's personal information to J. Coulson Construction Ltd.?

[para 8] Personal information is defined in section 1(1)(k) Act as follows:

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

[para 9] The information that the Complainant believes was disclosed by the Safety Consultant to the trucking company was that she suffered a back injury at work and made a Workers' Compensation Claim. This information fits within the definition of personal information. So, I must now decide if the Safety Consultant did, in fact, disclose the Complainant's personal information to the trucking company as the Complainant alleges.

[para 10] The Complainant was injured on the job while working at the Organization as a truck driver. At the time of her injury, the Safety Consultant was an independent contractor for the Organization. Her responsibilities included filling out paper work regarding the Organization's employees' Workers' Compensation Claims. As a result, the Safety Consultant was aware of the Complainant's injury.

[para 11] According to the Complainant she applied for a job with the trucking company and was asked by the owner to tell him about her back injury. The Complainant asked the owner of the trucking company how he knew about her injury and he stated that the Safety Consultant had told him about it. She also states that:

Soon after [the owner of the trucking company] hired me [the general manager of the trucking company] informed me that [the Safety Consultant] was calling [the owner of the trucking company] continually – harassing [the owner of the trucking company] cause (sic) he hired me. Tthe general manager of the trucking company] told me it was stressing [the owner of the trucking company] out that [the Safety Consultant] was calling him steady.

[para 12] In support of her position, the Complainant provided a statement signed by the owner and general manager of the trucking company that stated in part:

On or about 12 September 2015, [the trucking company] received a phone call from [the Safety Consultant] in regards to our hiring [the Complainant]. [The Safety Consultant] was inquiring if we had hired [the Complainant] as a truck driver for our company. In reply to her question, she was given the answer that yes, [the Complainant] is now employed with [the trucking company] as a truck driver and that she was an excellent employee within our company.

...

Also, previous to our hiring [the Complainant], about a year ago we were informed by [the Safety Consultant] our Safety Officer at that time, that [the Complainant] had hurt her back while employed with [the Organization]. [The Safety Consultant] was also the Safety Officer for [the Organization].

While [the Safety Consultant] was employed as our Safety Officer she informed us that we should not hire [the Complainant] because of her WCB claim for her back injury while employed with [the Organization].

[para 13] In contrast, the Safety Consultant states that she did not disclose the Complainant's personal information to the trucking company, or anyone else. She states:

...Monday Jan 27, 2014 I went to work at [the trucking company] like I did every Monday. At that time [the owner of the trucking company] had told me that one of [the Organization's] crew had an accident at the work site on Friday and had hurt herself. **[The owner of the trucking company] knew about the injury.** [The owner of the trucking company] knew this because the two companies worked very close together for years. The two company's (sic) workers were in communication with each other constantly. Nothing happened at the gravel pit that both companies didn't know about, such is the life of a gravel hauling company. I finished my work at [the trucking company] and went to [the Organization].

...

I quit working for [the trucking company] shortly afterward. When I left [the trucking company] the owners were upset with me, particularly [the general manager]. I left because of various reasons and they were not happy at all, they are still not happy with me. Never have I informed [the owner and general manager of the trucking company] of [the Complainant's] medical records, nor did I divulge any of her private information to anybody. I have only talked to [the owner of the trucking company] once since I left, and it was to discuss safety related issues, nothing more. I have never called to harass [the owner of the trucking company] about hiring [the Complainant] and quite frankly I find it slanderous that [the Complainant] would say I did.

[para 14] In her rebuttal, the Complainant states:

In regards to her employment at [the trucking company] [the Safety Consultant] was found to of neglected to do her job there which caused [the trucking company] to loose (sic) their Core.

[para 15] If this was in fact true or what the trucking company believed to be true, the Safety Consultant's contention that the trucking company was upset with her seems to be somewhat supported.

[para 16] It is clear that the evidence of the Safety Consultant and the Complainant are at odds such that I need to determine which version of events I accept. I have determined that I accept the Safety Consultant's version. My reason for doing so is that I feel the Safety Consultant's version of events is more plausible.

[para 17] First, I believe that when working on the same site as other truck drivers, word of an injured worker that had to be taken to the hospital would be noticed by others workers and discussed, such that word of the Complainant's injury likely would have already been known to the owner of the trucking company.

[para 18] In addition, throughout the Complainant's submissions, she refers to the Safety Consultant "harassing" the owner of the trucking company both before and after the Complainant was hired by them and telling them not to hire the Complainant. In fact, the letter signed by the owner and general manager of the trucking company details one phone call where the Safety Consultant asked if the Complainant was working there as a truck driver. Notably missing from that letter, signed by the parties to the conversation, was mention of the Safety Consultant telling the trucking company not to hire the Complainant. As well, there is no mention in the letter that the owner and general manager of the trucking company were being continually contacted (or harassed) by the Safety Consultant. So it seems that the Complainant may have overstated the amount and nature of the contact between the Safety Consultant and the trucking company.

[para 19] As well, I cannot see any motivation that the Safety Consultant would have to try and dissuade the trucking company from hiring the Complainant. There is no mention in the Complainant's submissions or evidence that would suggest why the Safety Consultant might take such a keen interest in this subject.

[para 20] Finally, I note that the conversation between the Safety Consultant and the owner of the trucking company wherein the owner of the trucking company said that the Safety Consultant told him about the Complainant's injury happened about a year before the letter was written. Therefore, the details of the conversation and the circumstances surrounding are not as clear as they would have been closer to the date of the conversation. For instance, the date of the conversation was not known. In contrast, the Safety Consultant seems to have a clearer recollection of that conversation.

[para 21] I find that the Safety Consultant did not disclose the Complainant's personal information to the trucking company and therefore the Safety Consultant and the Organization did not breach the Act. As a result, I do not need to decide the remaining issues in this inquiry.

IV. ORDER

[para 22] I make this Order under section 52 of the Act.

[para 23] I find that the Safety Consultant did not disclose the Complainant's personal information in contravention of the Act.

Keri H. Ridley
Adjudicator