

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER P2019-07**

November 15, 2019

**THE CO-OPERATORS GROUP LIMITED**

Case File Number 007050

**Office URL:** [www.oipc.ab.ca](http://www.oipc.ab.ca)

**Summary:** The Complainant made a complaint to the Commissioner under the *Personal Information Protection Act* (PIPA) that The Co-operators Group Limited (the Organization) had required him to provide a power of attorney when he attempted to cancel a motor vehicle insurance policy belonging to an ill family member. The Complainant provided the Organization with a letter from the family member's doctor, which stated that the Complainant had the power of attorney to make decisions on behalf of the family member. The Organization rejected the doctor's letter as evidence that the Complainant was authorized to act on the family member's behalf.

The Adjudicator determined that the Organization had required the power of attorney to satisfy itself that the Complainant had standing to alter terms of a contract of insurance between the Organization and an insured. She determined that the Organization had not collected more information than was necessary. She also determined that the Organization did not need to obtain consent, as it was clearly in the best interests of the insured that the Organization be satisfied that the Complainant had the legal authority to make changes to the contract on behalf of the insured.

**Statutes Cited:** **AB:** *Personal Information Protection Act*, S.A. 2003, c. P-6.5, ss. 1, 7, 14, 52; *Powers of Attorney Act* R.S.A., c. P-20. S. 2

**Authorities Cited:** **AB:** Orders P2012-08, P2015-07

## I. BACKGROUND

[para 1] On October 20, 2017, the Complainant made a complaint to the Commissioner under the *Personal Information Protection Act* (PIPA) that The Co-operators Group Limited (the Organization) had required him to provide a power of attorney when he attempted to cancel a motor vehicle insurance policy belonging to an ill family member. The Complainant provided the Organization with a letter from the family member's doctor, which stated that the Complainant had the power of attorney to make decisions on behalf of the family member. The Organization rejected the doctor's letter as evidence that the Complainant was authorized to act on the family member's behalf. The Complainant complained that the Organization was requiring more personal information than was necessary in order to provide a good or service and was in contravention of section 7(2) of PIPA.

[para 2] The Commissioner authorized a senior information and privacy manager to investigate and attempt to mediate the matter. At the conclusion of this process, the Complainant requested an inquiry.

[para 3] In the notice of inquiry, two questions were posed for the inquiry. I informed the parties that I would decide whether to hear from the Organization once I reviewed the Complainant's submissions regarding the questions.

[para 4] The Complainant provided his submissions. After I reviewed the Complainant's submissions, I decided to issue this order without hearing from the Organization.

## II. ISSUES

**Issue A: Is requiring an individual to produce a power of attorney authorization the same thing as collecting the individual's personal information?**

**Issue B: If so, did the Organization, as a condition of supplying a product or service, require consent to the collection of personal information beyond what is necessary to provide the product or service, contrary to section 7(2) of PIPA**

## III. DISCUSSION OF ISSUES

**Issue A: Is requiring an individual to produce a power of attorney authorization the same thing as collecting the individual's personal information?**

[para 5] The position of the Applicant in this inquiry is that a completed power of attorney contains the personal information of the person who signs a power of attorney as a "donor". The Applicant takes the position that by requiring a completed power of attorney before it would cancel his family member's insurance contract, the Organization was requiring more personal information than was necessary about the donor in order to provide this service.

[para 6]           The Applicant argues:

In reply to your Notice of Inquiry, Question #1, I present this answer. Given the number of breaches of personal information by a number of companies over the last few years, personal information has been compromised to the point that organizations who claim they can protect basic personal information has been proved false. Equifax, Capitol One, Desjardin Insurance, Home Depot, Marriot, Yahoo, all claimed to be able to protect customers basic personal information and then were proved wrong. Therefore collecting individual's basic personal information is anything but routine in the last decade.

So then when an organization cannot protect basic personal information, then why would a Power Of Attorney provide them with a copy of their customer's detailed legal decisions, power of attorney authorization, just to close a simple business transaction, an insurance policy? Your question presupposes that it is business as usual with the Alberta PIPA and organizations collecting basic personal information and being able to protect it as they are tasked to do in Alberta's PIPA.

If an organization cannot protect the simplest personal information of a customer, then why would I hand over a detailed legal document of their customer, that they have no means of protecting. This is wrong on two points, in that the organization demands detailed legal documents that they knowingly can't protect, as has been proven by the above organizations not being able to protect basic personal information, and that when offered a Physician's Letter the organization refused it and implied that I was an illegitimate Power Of Attorney.

Which your Office's questions acknowledge I was. All the organization had to do was inform me of what their policies were, what Alberta legislation they were relying on to request a Power Of Attorney document and provide this in writing to their customer's mailing address. Which they didn't do and as far as I know they have not cancelled their customer's insurance policy after it wasn't paid by myself, the Power Of Attorney.

Thereby breaching their own company policy for lapsed policies, as this is a business standard. A detailed legal document, power of attorney authorization, is more than just basic personal information as per Alberta's PIPA.

*Does requiring an individual to provide a power of attorney prior to permitting the individual to exercise contractual rights on behalf of someone else amount to collecting personal information within the terms of PIPA?*

[para 7]           There are two parties to an insurance contract: the insured and the insurer. The contract of insurance sets out the rights of the parties and covers such as things as the terms and duration of the contract.

[para 8]           A third party, such as the Complainant, is a “stranger” to the contract between the family member and the Organization. In other words, there are no rights under the contract that he may exercise on his own behalf, as he is not a party to it.

[para 9]           However, there will be cases where a third party, such as the Complainant, may exercise an insured's rights on behalf of the insured, despite being a stranger to the contract. For example, if the third party is named by an insured as having authority to exercise the power of attorney – the power to manage the property and finances of the

insured as if they were the insured – then the third party with the power of attorney may exercise the insured’s rights under the contract.

[para 10] Powers of attorney in Alberta are governed by the *Powers of Attorney Act* R.S.A., c. P-20. Section 2 of this Act states, in part:

*2(1) A power of attorney is an enduring power of attorney if*

*(a) the donor is an individual who is an adult at the time of executing the power of attorney, and*

*(b) the power of attorney meets at least the following requirements:*

*(i) it is in writing, is dated and is signed*

*(A) by the donor in the presence of a witness, or*

*(B) if the donor is physically unable to sign an enduring power of attorney, by another person on behalf of the donor, at the donor’s direction and in the presence of both the donor and a witness;*

*(ii) it is signed by the witness in the presence of the donor;*

*(iii) it contains a statement indicating that it either*

*(A) is to continue notwithstanding any mental incapacity or infirmity of the donor that occurs after the execution of the power of attorney, or*

*(B) is to take effect on the mental incapacity or infirmity of the donor.*

[para 11] A power of attorney that complies with the terms of the Act will reveal the following information about the donor: the name of the donor, the fact that the donor is an adult, and the fact that the donor signed a power of attorney. (If the enduring power of attorney is signed by someone else on behalf of the donor, it can be inferred that the donor may be physically unable to sign it but directed the other person to sign it.)

[para 12] PIPA defines personal information in the following way:

*1(1) In this Act,*

*(k) “personal information” means information about an identifiable individual [...]*

[para 13] The name and age of the donor, and the fact that they signed a power of attorney, is personal information within the terms of section 1(1)(k) that would be revealed to the Organization if it received a power of attorney.

[para 14] The name of the recipient of the power of attorney will also appear in an executed enduring power of attorney. However, the recipient of the power of attorney acts as a representative of the donor. As discussed in previous orders, information about an individual acting on behalf of someone else is not the individual's personal information but is information about the person or entity the individual represents. (See orders P2012-08 at paragraphs 16, 18 – 19 and P2015-07 at paragraph 15.) Any information about the Complainant acting under the power of attorney would be about the actions of the family member, rather than the Complainant. I address the Organization's authority to collect the family member's personal information below.

**Issue B: If so, did the Organization, as a condition of supplying a product or service, require consent to the collection of personal information beyond what is necessary to provide the product or service, contrary to section 7(2) of PIPA**

[para 15] Section 7(2) of PIPA states:

*7(2) An organization shall not, as a condition of supplying a product or service, require an individual to consent to the collection, use or disclosure of personal information about an individual beyond what is necessary to provide the product or service.*

[para 16] Section 7(2) prohibits an organization from requiring an individual to consent to the collection of personal information about an individual when doing so is unnecessary to provide a product or service. The position of the Complainant is that the Organization required him to consent to its collection of personal information as a condition of providing a good or service, and that collecting this personal information was gratuitous for the purpose of providing the good or service.

[para 17] In my view, the Organization was not providing a good or service to the Complainant or the Complainant's family member. The Organization requested evidence to establish that the Complainant had legal standing to exercise his family member's rights under a contract of insurance – in this case, to cancel the contract. Determining the standing of the Complainant is not a good or a service, but a step the Organization had to take in order to comply with its obligations to the insured under the contract.

[para 18] If the Organization does not verify legal standing whenever a stranger asserts rights under a contract, it might end up in violation of its contractual duties to its insureds. For example, if it were to mistakenly cancel an insurance contract at the request of a third party lacking legal authority to make the request, the Organization could be in breach of its contract with the insured. In addition, there could be legal consequences for the insured in the event of a loss that would otherwise be indemnified.

[para 19] Even if it were the case that the Organization's ensuring that the Complainant had legal standing to exercise the family member's rights under the contract is a good or service, requiring an executed enduring power of attorney was reasonable,

given that the Complainant asserted this document as his authority to cancel the family member's contract. If it were the case that the Complainant's authority to act came from a Court Order, then it would have been reasonable to require the Court Order before accepting and effecting changes to the contract.

[para 20] The Complainant takes the position that the Organization should have accepted a letter he submitted from the family member's physician as evidence that he has authority to exercise rights on behalf of the family member. This letter states:

[The family member] has been under my care for greater than 20 yrs. She is unable to take care of her own affairs in regard to health, financial and living decisions. [The Complainant] has her power of attorney and has the legal power to make these decisions for her.

[para 21] The foregoing is an opinion on legal standing by a physician. While it may be entirely correct, the basis for the opinion is unknown. It was reasonable for the Organization to require the actual legal document providing the Complainant with the authority to exercise rights on behalf of the family member. I note, too, that the physician's letter contains more personal information about the family member than would an enduring power of attorney compliant with section 2 of the *Powers of Attorney Act*.

[para 22] In my view, section 7(2) of PIPA is irrelevant in this case, as the Organization had authority under section 14(1)(a) to collect personal information in the circumstances without consent. Section 14(1)(a) 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:*

*(a) a reasonable person would consider that the collection of the information is clearly in the interests of the individual and consent of the individual cannot be obtained in a timely way or the individual would not reasonably be expected to withhold consent [...]*

As discussed above, ensuring that a third party has authority under a valid power of authority to alter an insured's rights under a contract of insurance protects the interests of the insured. In my view, the Organization had authority to collect any personal information contained in a valid power of attorney and so this is not a case where the Organization could be said to have required anyone to consent to the improper collection of personal information.

#### **IV. ORDER**

[para 23] I make this Order under section 52 of the Act.

[para 24] I confirm that the Organization has not failed to meet any duties to the Complainant that are imposed by the Act.

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Teresa Cunningham  
Adjudicator