ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER P2021-07

August 30, 2021

INDUSTRIAL ALLIANCE INSURANCE AND FINANCIAL SERVICES INC.

Case File Number 008821

Office URL: www.oipc.ab.ca

Summary: The Complainant applied for long term disability benefits with Industrial Alliance Insurance and Financial Services Inc. (the Organization) on August 4, 2017. The Organization collected his personal information over a five month period and closed his file on January 18, 2018.

The Complainant made a complaint under the *Personal Information Protection Act* (PIPA) that the Organization collected and/or disclosed his personal information in contravention of PIPA, in the course of assessing his claim. The Complainant also alleged that the Organization's email practices fail to meet the standard of appropriate security arrangements required under section 34.

The Adjudicator determined that the Organization had consent to collect and disclose the Complainant's personal information as it did. The Adjudicator found that the Organization did so in order to assess his disability claim, and did not collect or disclose more information than was reasonable to meet that purpose.

The Adjudicator concluded that the amount of information included in an email subject line did not meet the requirements to make reasonable security arrangements to protect personal information. However, Adjudicator found that the Organization's amended practices are sufficient to meet the standard in section 34.

Statutes Cited: AB: *Personal Information Protection Act*, S.A. 2003, c. P-6.5, ss. 1, 8, 34, 52.

Authorities Cited: AB: Decision P2011-D-003, Orders F2019-42, H2021-02, P2005-001, P2006-008, P2013-04

Cases Cited: *Leon's Furniture Limited v. Alberta (Information and Privacy Commissioner)*, 2011 ABCA 94 (CanLII)

I. BACKGROUND

[para 1] The Complainant applied for long term disability benefits with Industrial Alliance Insurance and Financial Services Inc. (the Organization) on August 4, 2017. According to the Complainant, the Organization knew as of September 27, 2017 that he was under the care of a medical doctor and a therapist. The Organization collected his personal information over a five month period and closed his file on January 18, 2018.

[para 2] The Complainant made a complaint under the *Personal Information Protection Act* (PIPA or the Act) that the Organization collected and/or disclosed his personal information in contravention of PIPA, in the course of assessing his claim. The Complainant also alleges that the Organization's email practices fail to meet the standard of appropriate security arrangements required under section 34.

[para 3] The Commissioner authorized mediation, which did not resolve all the issues. In his request for inquiry, the Complainant specified that the Organization did not have authority to continue to collect his personal information once it determined that the Complainant was not under the care of a registered specialist applicable to the Complainant's disability (the grounds for which the Complainant states his claim was denied).

[para 4] The Complainant also states that the Organization disclosed personal information related to the Complainant's claim to his employer without authority, and that the Organization's emails to the Independent Medical Examiner do not meet the security requirements in section 34 of the Act.

II. ISSUES

[para 5] The Notice of Inquiry, dated March 9, 2021, states the issues for inquiry as the following:

1. Did the Organization collect, and/or disclose the Complainant's personal information contrary to, or in compliance with, section 7(1) of PIPA (no collection, use or disclosure without either authorization or consent)? In particular,

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

b. If the Organization did not have the authority to collect and/or disclose the information without consent, did the Organization obtain the Complainant's consent in accordance with section 8 of the Act before collecting or disclosing the information? In particular,

   i. Did the individual consent in writing or orally? or
   ii. Is the individual deemed to have consented by virtue of the conditions in section 8(2)(a) and (b) having been met? or
   iii. Is the collection, use or disclosure permitted by virtue of the conditions in section 8(3)(a), (b) and (c) having been met?

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

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

4. Did the Organization comply with section 34 of the Act (reasonable security arrangements)?

III. DISCUSSION OF ISSUES

1. Did the Organization collect, and/or disclose the Complainant's personal information contrary to, or in compliance with, section 7(1) of PIPA (no collection, use or disclosure without either authorization or consent)?

[para 6] The Complainant has the initial burden of proof, in that he has to have some knowledge, and adduce some evidence, regarding what personal information was collected and/or disclosed; the Organization then has the burden to show that its collection and disclosure of the Complainant's personal information was in accordance with PIPA (Order P2005-001 at para. 8; Order P2006-008 at para. 11).

[para 7] The Act defines "personal information" as "information about an identifiable individual" (section 1(1)(j)). The personal information at issue consists of information about the Complainant's medical condition, as well as information about his work history. This is the Complainant's personal information.

[para 8] Section 8 of PIPA provides the methods of consent contemplated by the Act. The relevant portions are as follows:

> *8(1) An individual may give his or her consent in writing or orally to the collection, use or disclosure of personal information about the individual.*
>
> *(2) An individual is deemed to consent to the collection, use or disclosure of personal information about the individual by an organization for a particular purpose if*

(a) the individual, without actually giving a consent referred to in subsection (1), voluntarily provides the information to the organization for that purpose, and

(b) it is reasonable that a person would voluntarily provide that information.

...

(3) Notwithstanding section 7(1), an organization may collect, use or disclose personal information about an individual for particular purposes if

(a) the organization

(i) provides the individual with a notice, in a form that the individual can reasonably be expected to understand, that the organization intends to collect, use or disclose personal information about the individual for those purposes, and

(ii) with respect to that notice, gives the individual a reasonable opportunity to decline or object to having his or her personal information collected, used or disclosed for those purposes,

(b) the individual does not, within a reasonable time, give to the organization a response to that notice declining or objecting to the proposed collection, use or disclosure, and

(c) having regard to the level of the sensitivity, if any, of the information in the circumstances, it is reasonable to collect, use or disclose the information as permitted under clauses (a) and (b).

[para 9] The Organization argues that it obtained the Complainant's written consent to collect and disclose his personal information as it did. The Organization and the Complainant both provided a copy of the consent form signed by the Complainant, dated August 23, 2017. The form states:

> I HEREBY AUTHORIZE any healthcare provider or professional, medical organization, the Medical Information Bureau, any insurance or reinsurance company, investigation and credit reporting agency, workers' compensation board, the policyholder, my employer, as well as any other person, private or public organization or institution, to disclose and exchange any personal or health information, records (including physicians' notes) or knowledge concerning myself, with Industrial Alliance Insurance and Financial Services Inc. ("Industrial Alliance"), its employees, reinsurers or any agency acting on behalf of Industrial Alliance, as required for the purpose of assessing my disability claim.

Collection of the Complainant's personal information

Arguments of the parties

[para 10] The Complainant's concern about the Organization's collection of his personal information is that the Organization continued to collect information about him after he believes it had already decided to reject his claim. He states that his claim was rejected under a provision of the insurance policy, which requires the claimant to be under the care of a physician who is a specialist in the appropriate field. He states that the Organization was aware by September 2017 that he was under the care of a family physician, and a social worker. The Complainant's argument seems to be that if the Organization denied his claim because the family physician and

social worker were not specialists in the appropriate field, it did not need to collect additional information about him, including from his family physician, to deny his claim.

[para 11] The Complainant provided copies of correspondence between him and the Organization relating to his claim. In October 2017, the Organization informed the Complainant by phone and letter, that it required additional information to make a determination about his claim. It informed him that it requested additional information from his family physician. The Complainant acknowledged this via letter, expressing concern about the amount of time it was taking the Organization to process his claim.

[para 12] The Complainant provided a copy of a January 2018 letter from the Organization to a different physician (Dr. S), asking Dr. S to conduct an Independent Medical Examination (IME).

[para 13] The Complainant provided a copy of a letter to him from the Organization dated January 18, 2018, in which he was informed that his file was closed. In that letter, the Organization quotes the provision of the insurance policy stating that a claimant must be under the care of a physician who is a specialist in the appropriate field, in order to be eligible for benefits. The Organization goes on to state in that letter, that the Complainant was scheduled to see Dr. S for an IME, and that the Complainant cancelled that appointment. It states that the Complainant had a responsibility to attend the IME. It states that it previously informed the Complainant by letter that failure to attend the IME may result in his benefits being terminated or declined. The Organization concluded the letter by stating that given the circumstances, his claim file was closed.

[para 14] The Complainant also provided a copy of a letter to him from the Organization dated February 28, 2018, addressing concerns the Complainant had raised about the processing of his claim. In that letter, the Organization reminded the Complainant that he was informed in December 2017 by letter that he was obliged to attend the IME and the consequences for failing to do so. It quoted the provision of the insurance policy stating that the Organization has the right to require a claimant to undergo a medical examination by a physician of the Organization's choosing.

[para 15] The letter concludes that the Organization was not changing its decision. It stated again that the Complainant failed to comply with the terms of the policy requiring him to attend the IME. It also noted that there is no indication that the Complainant is "under the regular care and attendance of a physician who is a registered specialist in the field of medicine which is applicable to your disability."

[para 16] The Complainant provided what appears to be a transcript of a call between him and the Organization, made on March 1, 2018, discussing the Organization's decision regarding his claim. It is not clear how this transcript was obtained. In any event, this transcript shows the Organization explaining to the Complainant that his claim was not declined, rather it was pending further review in the form of an IME. Since the Complainant failed to attend the IME, the file was closed.

[para 17] In a supplemental submission, the Complainant argues that the Organization took an excessive amount of time to process his file. He states that the Organization regularly exceeded its own "service standards". He argues that this delay supports his argument that the Organization was not seeking additional medical information to make a determination about his claim. The Complainant states that the Organization requested additional information from his physician in the form of questionnaires, on October 4, 2017, and that this information was provided by the physician by October 14, 2017. The Complainant states that when he followed up with the Organization, the Organization told him that it hadn't received clinical notes from the physician; the Complainant states that clinical notes were not included in the Organization's request for information from the physician. The Complainant asked his physician to provide clinical notes to the Organization, which was done on November 8, 2017. The Complainant argues that if the clinical notes had been significant for the determination of his claim, they would have been sought by the Organization earlier.

[para 18] The Complainant states that the Organization's file notes show that it reviewed the claim file on November 23, 2017, but that nothing further was noted until December 19, 2017, when the Organization contacted the Complainant to inform him it was pursuing an IME. The Complainant concludes (July 20 submission, at page 3):

> If the general practitioner's case notes were of vital importance - if the notes might reveal a medical impairment related to the claim – they might have reasonably been requested early on. The chronology suggests that obtaining the notes was not a priority since they were not requested on 4 October and it was the Complainant who requisitioned the notes, not the Respondent. To be clear, the Complainant reviewed the original ask and there was not mention of notes in that request.

[para 19] Regarding the Organization's request for the Complainant to attend an IME, the Complainant argues that the Organization assured him that the IME was confidential, and that his employer did not influence the IME, nor was it otherwise involved in the IME. He points to the above quote from the Claim Summary notes of the phone conversation between the Organization and the employer, stating that this shows that the employer would be involved in the IME. The Complainant states (rebuttal submission, at page 3):

> While the medical protocols for independent assessment are not part of a privacy review, the manner in which the assessment was directed, involving the Respondent's direct contact with professional, meant that the assessment would not be independent.
>
> Just as the "independent" exam is a misnomer – the purpose of the IME was to obtain a medical opinion from a specialist that the Complainant could perform a modified work description.
>
> This assertion is based on the evidence that illustrates the Respondent discussed with the employer a modified job description, which was then supplied to the IME.
>
> There can be no other reasonable explanation for the Complainant to attend the Respondent's hired medical expert where the specialist was provided with a modified job description.

[para 20] The Complainant also argues that had the Organization required an IME to make its determination, it would have requested one earlier than it did. With his last submission, the

Complainant provided a letter he had previously sent to the Organization regarding his claim; in that letter, he alleges that the Organization "colluded with the employer to force a return to work, rather than independently assessing the facts."

[para 21] In its rebuttal submission, the Organization states that it collected the Complainant's information from his physician for the purpose of making a determination regarding his claim. However, the information from the physician was not sufficient to make a determination, and the Organization sought an IME. The Organization states (at page 2):

> In contrast to the Complainant's allegation, the absence of care under a medical specialist, as and of itself would not have rendered the Complainant's claim to be completely ineligible if there were other circumstances that would have allowed the claim. The Respondent's investigation with the GP was for the purpose of finding out if there were circumstances that would make the Complainant's claim eligible. Had the GP's file revealed a medical impairment for which the Complainant was sufficiently treated by the GP, for symptoms of the disability he is claiming, this would be have been taken into consideration for the claim eligibility. In order to accept a claim, the Respondent requires proof that there is a disability that is being treated. Therefore, the Complainant's allegation that the collection from the GP was not relevant is completely untrue.
>
> …
>
> The goal of the request for information from the GP was to obtain evidence of the Complainant's condition. Each piece of information received from the GP was reviewed carefully. But the information that was received by the Respondent was not sufficient to show that the Complainant would be eligible for disability benefit under his extended health policy. At the time, the level of treatment of the Complainants' symptoms was very minimal and the Respondent needed to have a better understanding of the overall severity of his illness. Had the GP provided sufficient information to indicate the treatment of symptoms, or had there been sufficient information that the Complainant was under the care of a specialist in the field in which he was claiming disability, in either case the Complainant's claim would have been approved.

[para 22] The Organization also disputes the Complainant's allegation that clinical notes were not initially sought from his physician. The Organization provided a copy of the letter and questionnaire sent to the Complainant's physician; that questionnaire requests copies of "all clinical notes and consult reports" for the relevant time period. The Organization states that regardless of when the clinical notes were requested or obtained, they were necessary "to form a complete picture of the Complainant's situation."

[para 23] Regarding the IME, the Organization provided a copy of a Claim Summary sheet that summarizes a call from the Complainant's employer to the Organization regarding the Complainant's claim. The call is described as a "telephone interview conducted with Employer." The summary includes notations of what was said by the employer about the Complainant's role with the Organization and ability to return to work. The relevant portions state:

> ER is able to facilitate a GRTW with HR. ER needs a note from Dr to confirm medical clearance. Job description would be sent to the doctor and the ER would be able to confirm any restrictions and limitations required however ER also stated that if the Insurer conducted an IME and clarified R&L's that this would be sufficient for them as well.
>
> …
>
> ER requires 2 weeks notice prior to starting a RTW.

> CM advised ER that we are considering an IME at this time for further review. Call ended.

[para 24] The Organization states that this call was a standard employer interview conducted by a claim manager. It states (August 11, 2021 submission, at page 2):

> The purpose of the call was to obtain the employer's impression of their employee, which is an important aspect of the claim investigation. During that call there was a discussion of an IME but it was the claim manager's conclusion that an IME is required, the employer would be in no position to "direct" the insurer to initiate an IME. Obtaining the employer's input is an integral part of the claim investigation and does not in any way "diminish the role and diagnosis of the medical practitioner" as claimed by the Complainant.

Analysis

[para 25] I do not interpret the phone conversation between the Organization and the employer in the same way as the Complainant. It appears to me that the employer was describing to the Organization what it would require in order to facilitate a gradual return to work (GRTW) for the Complainant. It would require medical clearance; the employer would provide a job description for the relevant medical practitioner so that the medical practitioner could confirm any restrictions and limitations. However, the employer would also be satisfied with an IME and clarified restrictions and limitations (whether from the IME physician or otherwise is unclear from the notes). In other words, the quote above does not state that the Complainant's employer would be communicating with the IME physician. Neither does it state that a modified work description had already been created by the employer and provided to the Organization or the IME. Rather, the quote seems to describe what the employer would require for its own 'return to work' process.

[para 26] Whether or not this conversation is an appropriate opportunity to discuss a modified job description is not a matter I have jurisdiction to review under PIPA

[para 27] I accept that the Organization closed the Complainant's file because of his failure to attend an IME in January 2018, as he was required to do. Prior to this, the Organization was continuing to process the Complainant's claim. That included collecting personal information about the Complainant from his physician and his employer. In the correspondence provided to me by the Complainant, he refers to the Organization's collection of additional information from his physician, as well as information from his employer; in each case, the Complainant acknowledges that the collection of information is reasonable. In his request for inquiry, the Complainant's concern is that the collection was not necessary if the decision had already been made to deny his claim, in September or October 2017. However, the evidence leads me to conclude that the Organization had not made such a decision at that time.

[para 28] The Complainant argues that an IME would have overridden the relevance of information previously collected from his physician. He states "[t]he collection prior to the IME would serve no purpose and so in this context its collection was invalid" (July 20 submission, at page 4). Even if the Organization based its final determination on information obtained via an IME, rather than information previously obtained form the Complainant's physician, this

wouldn't necessarily invalidate the authority to collect the information from the Complainant's physician.

[para 29] In Order H2021-02, I considered an argument that a custodian under the *Health Information Act* (HIA) is not authorized to collect personal health information if that information was not in fact necessary to provide the health service. I reviewed similar decisions made under the *Freedom of Information and Protection of Privacy Act* (FOIP Act), concluding (at paras. 50-51):

> This is too strict a test for determining what is necessary to collect. In Order F2012-05, I considered the collection of personal information under the FOIP Act by the WCB, in the course of determining a claimant's eligibility for benefits. The claimant in that case had argued that not all of the information collected about her was necessary to determine her eligibility. I found that the WCB did not have to ultimately rely on all the information it collected, in order for the collection to be authorized. I said (at para. 30):
>
> > Often at least some of the information collected will not ultimately be relied on to make the determination; part of a case manager's job is to sort through the information that they have sought out or that is presented to them, to decide what is relevant. It would not be practical to thwart the work of investigators carried out in good faith, by the prospect that after the fact, what they collect will be judged, with hindsight, to be irrelevant as evidence and the collection to have been unauthorized. In my view, the investigator may collect any information that could reasonably be said to be related to the matter under investigation and potentially relevant. It need not ultimately be proven to be relevant in fact.
>
> In my view, this analysis applies to section 20(b) of the HIA as well. It may not be obvious to the Custodian (or an affiliate) at the time it collects health information what precisely will ultimately be required to provide health services. In this case, the information that the Custodian collected (if it was collected) is a prenatal record, containing information about the Complainant's pregnancy, from her treating physician. It seems clear that information in a prenatal record is reasonably related to health services provided to the Complainant during her delivery, and to her son following his birth.

[para 30] The same reasoning was applied in Order F2019-42, which adds "[f]urther, it is difficult for a public body to immediately assess what information being provided by a complainant will ultimately be relevant when investigating the complaint. For this reason, public bodies have been granted latitude when determining what personal information to collect in the course of an investigation" (at para. 33).

[para 31] While the above decisions were made under the HIA and FOIP Act, the principles seems applicable under PIPA as well. In *Leon's Furniture Limited v. Alberta (Information and Privacy Commissioner)*, 2011 ABCA 94 (CanLII), the Court of Appeal discussed how the reasonable standard is to be interpreted under PIPA. It said that 'reasonableness' is not "necessity", "minimal intrusion" or "best practices" (at para. 39). It further stated that an organization need only show that "its policies were 'reasonable', not that they were the 'best' or 'least intrusive' approaches" (at para. 57).

[para 32] In my view, the Organization's approach of collecting information from the Complainant's physician first, and later pursuing an IME for additional information, is reasonable. Even if the information provided by the physician was ultimately not used to make the determination, the reasonableness of the collection at the time it occurred is not invalidated. There is no reason to believe that at the time the Organization requested information from the Complainant's physician, it had already determined that this information would not be relevant or used to make a decision regarding the Complainant's claim.

[para 33] I understand the Complainant's point about the amount of time the Organization took to process his claim. I do not know if this is a reasonable amount of time to process a disability claim. Either way, even if the Organization's process included unreasonable delays, I do not agree that the delays invalidate the Organization's authority to take the steps it did during that process.

[para 34] The Complainant has also made arguments regarding what decision the Organization ought to have made with information it had about his diagnosis before it requested an IME, and regarding the validity and/or truthfulness of statements made by the Complainant's employer (as they appear in the Organization's notes). Whether the Organization ought to have requested additional medical information and/or whether it ought to have accepted his claim given the existence of particular information the Organization already had, is not a matter I have jurisdiction to review under PIPA. I also do not have jurisdiction to consider whether the Complainant's employer made accurate statements to the Organization regarding the Complainant's job duties or performance.

[para 35] I find that the Organization's collection of the Complainant's personal information was for the purpose of making a determination regarding his disability claim. The Complainant consented to this collection by signing the consent form cited above.

Disclosure of the Complainant's personal information to his employer

[para 36] The Complainant's concerns about information disclosed to his employer relates to information provided during a phone conversation between the Organization and the employer. The Complainant states that the "apparent crafting of a modified job description occurred in the absence of approval of the claim." The Complainant indicates that such a conversation would have been appropriate only if he had already been approved for benefits, and was "working with a specialist to ease back to work" (rebuttal submission at page 5). I have discussed my interpretation of this phone conversation earlier in this Order and concluded that the phone conversation between the Organization and employer did not state that the Complainant's employer would be communicating with the IME physician. Nor did it involve crafting a modified job description.

[para 37] The Complainant argues that because the Organization had a phone conversation with the employer, it may have disclosed more personal information about the Complainant than what is revealed in the Claim Summary notes. The Complainant argues that the nature of a conversation facilitates exchange.

[para 38] The Complainant has not provided any reason to believe that the Organization did disclose more personal information than what the Claim Summary notes reveal. Noting that a conversation includes an exchange of information is not sufficient to support an allegation that the Organization disclosed more personal information about the Complainant than what was recorded in the Claim Summary notes.

[para 39] The only information about the Complainant that the Organization provided to the employer as recorded in the Claim Summary notes is that the Org was considering sending the Complainant for an IME. The Complainant argues that the consent form he signed refers only to information being disclosed *to* the Organization by other parties. It does not authorize the Organization to disclose his personal information to his employer.

[para 40] In Decision P2011-D-003, former Commissioner Work considered whether information in a lawyer's file about an opposing party (individual) is personal information of that individual. He concluded (at para. 30):

> 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.)

[para 41] In my view, the statement that the Organization was considering an IME is similarly not "about" the Complainant, and is not his personal information. The statement is better characterized as information about the Organization's process and where the claim file currently was in that process.

[para 42] In the event that I am wrong, and this statement does include the Complainant's personal information, I will consider the Organization's argument that that the Complainant consented to this disclosure.

[para 43] The Organization argues that the form allows the Organization and employer to exchange information for the purpose of assessing the disability claim. It points to the consent form, cited earlier in this Order, which authorizes the disclosure "and exchange" of personal information by the entities listed, including the Complainant's employer, to the Organization for the purpose of assessing the disability claim. It states (initial submission at page 2):

> The discussion between iA and the employer was a legitimate discussion related to the Complainant's case. In disability claim situations, the employer needs to know how the claim is progressing, whether the insurer has reached a decision or whether it needs to gather more information, such as through an Independent Medical Examination (IME). This conversation was for the reasonable purpose of managing the advancement of the claim.
>
> An IME is a routine part of the claim progression and discussing the possibility of conducting an IME as part of the investigation is a reasonable and material part of the communication between

> the employer and the insurer and does not amount to unreasonable disclosure of personal information. The file notes of this conversation do not indicate any discussion that is beyond what would be reasonable for the purpose of managing the complainant's claim or any discussion at all about the Complainant's specific IME. Specifically, the file notes describe the employer's representative mentioning an IME as a possible next step in the file, nothing more.

[para 44] I agree that the form specifies that the listed entities may disclose and exchange personal or health information about the Complainant with the Organization, for the purpose of assessing the Complainant's claim. The Complainant's disability claim and his ability to return to work with restrictions or limitations are intertwined issues. The administration of a disability claim depends, in part, on the claimant's ability to return to work. As indicated in the Claim Summary notes, the Organization and employer consult to ensure the Complainant's return to work is done in a medically-advised manner. The Organization is obliged to ensure that it discloses only personal information of the Complainant that is necessary to assess the disability claim, which includes any return-to-work plan. The consent form authorizes the employer to "exchange" information necessary to assess the claim with the Organization. This implies a transfer of any such information between these two entities *in either direction*.

[para 45] In my view, to the extent that the Organization disclosed the Complainant's personal information when it informed the employer that it was considering an IME, the Complainant consented to this limited disclosure.

[para 46] Given my findings, I do not need to consider whether the Organization had authority to collect or disclose the Complainant's personal information without consent.

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

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

[para 47] Sections 11(1) and 19(1) require an organization to collect and disclose personal information only for purposes that are reasonable. Sections 11(2) and 19(2) limit an organization's collection and disclose, respectively, to what is reasonable for meeting the purposes of the collection and use.

> *11(1) An organization may collect personal information only for purposes that are reasonable.*
>
> *11(2) Where an organization collects personal information, it may do so only to the extent that is reasonable for meeting the purposes for which the information is collected.*
>
> *19(1) An organization may disclose personal information only for purposes that are reasonable.*
>
> *19(2) Where an organization discloses personal information, it may do so only to the extent that is reasonable for meeting the purposes for which the information is used.*

[para 48] Section 2 defines reasonable as follows:

> *2 Where in this Act anything or any matter*
>
> *(a) is described, characterized or referred to as reasonable or unreasonable, or*
>
> *(b) is required or directed to be carried out or otherwise dealt with reasonably or in a reasonable manner,*
>
> *the standard to be applied under this Act in determining whether the thing or matter is reasonable or unreasonable, or has been carried out or otherwise dealt with reasonably or in a reasonable manner, is what a reasonable person would consider appropriate in the circumstances.*

[para 49] Regarding the collection of the Complainant's personal information, I have already found that the Organization did not decide to deny his claim, prior to collecting additional information about him from his physician and/or employer. I found that the collection of this additional information was for the purpose of making a determination regarding his claim.

[para 50] Collecting information from the Complainant's family physician regarding the medical condition that formed the basis of his disability claim is a reasonable for the purpose of making a determination regarding that claim. There is no indication that the Organization collected more information about the Complainant than was reasonable to make a determination. I find that the collection met the terms of section 11(1) and (2).

[para 51] Regarding the disclosure of the Complainant's personal information to his employer, I found that the statement that the Organization may send the Complainant for an IME was information primarily about the Organization's process, and where the Complainant was in that process. To the extent that this statement revealed personal information about the Complainant, it was disclosed with consent, for the purpose of assessing the disability claim.

[para 52] I find that this is a reasonable purpose. The amount of information disclosed by the Organization for this purpose was limited and also reasonable. I find that the Organization met the terms of sections 19(1) and (2).

4. Did the Organization comply with section 34 of the Act (reasonable security arrangements)?

[para 53] Section 34 of the Act states:

> *An organization must protect personal information that is in its custody or under its control by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure, copying, modification, disposal or destruction.*

[para 54] Order P2013-04, describes an organization's obligations under section 34 as follows (at para. 18):

> To be in compliance with section 34, an organization is required to guard against reasonably foreseeable risks; it must implement deliberate, prudent and functional measures that demonstrate that it considered and mitigated such risks; the nature of the safeguards and measures required to be undertaken will vary according to the sensitivity of the personal information (Order P2006-008 at para. 99).

[para 55] In his request for inquiry, the Complainant states:

> The Claimant is satisfied that the Organization emailed to the IME physician was password protected and that this is a form of encryption.
>
> The outstanding complaint here is that the subject line spelled out the Complainant's full name.
> …
>
> There can be no justification for providing the Complainant's full name in the subject line in an email correspondence given the nature of the medium of exchange.

[para 56] The Complainant further states in his rebuttal submission (at page 6):

> Within the Request for Inquiry, 30 January 2020, the Complainant noted that the email could have inadvertently gone misdirected, hacked, or displayed on the IME doctor's computer or mobile device, or his assistant's mobile device, while they scrolled through emails in a queue for coffee. The contents of the attachment may have been secured via password protection but the most pertinent information was publicly viewable. Consideration should be given for the common use of banners on mobiles which adds to the risk of third-party disclosure.

[para 57] In its initial submission, the Organization states (at page 5):

> iA used reasonable security arrangements in its communications and in compliance with section 34 of the Act. The Complainant alleges that the Company failed to uphold section 34(1) of the Act because in the email to the IME specialist, the Complainant's full name was spelled out in the email RE line. iA submits that the Complainant's name was included in the RE line so that the IME specialist could identify the individual whose information was included in the email without opening the password protected PDF document in the email.

[para 58] In its rebuttal submission, the Organization clarified that following the earlier review conducted by this Office, it has amended its practices when sending emails containing personal information to an IME assessor. It states that it no longer reveals the claimant's full name.

[para 59] Aside from the Complainant's full name in the subject line of an email to an IME assessor, the subject line of the email also includes a phrase that reveals the type of IME to be conducted. This phrase reveals substantive information about the Complainant's medical condition. The fact that the Complainant is being sent for a *particular type* of IME reveals reasonably sensitive information about the Complainant's health concerns. This type of detail, together with a claimant's full name, comprises too many data elements to be provided in the subject line of an email, which is less secure than the encrypted content of the email.

[para 60] The Organization's amended practice is to no longer include the claimant's full name in the email subject line. I am satisfied that these current practices reflect reasonable security arrangements to protect personal information. Therefore, to the extent that the Organization's former email practices may have been insufficient to protect personal information, those practices have been remedied and there is nothing further for me to order.

IV. ORDER

[para 61] I make this Order under section 52 of the Act.

[para 62] I find that the Organization had authority to collect and disclose the Complainant's personal information as it did. I also find that the Organization collected and disclosed the information for reasonable purposes, and to the extent reasonable.

[para 63] I find that the Organization's inclusion of the Complainant's full name, file number and type of IME sought in the subject line of an email did not meet the requirements to make reasonable security arrangements to protect personal information. However, the Organization has amended its practices, and its current practices are sufficient to meet the standard in section 34. Therefore, there is nothing further for me to order.

_____

Amanda Swanek
Adjudicator