ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER P2022-01

January 5, 2022

GROSVENOR HOUSE CONDOMINIUM PLAN 772-2911

Case File Number 009923

Office URL: www.oipc.ab.ca

Summary: The Complainant made a complaint under the *Personal Information Protection Act* (PIPA or the Act) that the Grosvenor House Condominium Plan 772-2911 (the Organization) contravened the Act when it posted a notice (the Notice) on a bulletin board inside the entrance of the condo complex where the Complainant lived, that said he was in condo fee arrears.

The Organization posted the Notice on a bulletin board in the entry way of the condo complex as the Complainant had not paid his condo fees for several months. The Organization does not dispute the fact the Notice was posted.

The Complainant requested a review by this office and subsequently requested an inquiry.

The Adjudicator determined that the Organization did not have authority to disclose the Complainant's personal information without consent. The Adjudicator did not accept that the disclosure was necessary for the Organization to collect the debt, because the Complainant was already made aware that the fees were owed and so the disclosure could not be said to address the reasons for which the fees were unpaid. The Organization had already undertaken other actions that were better suited to obtaining the fees owed.

The Adjudicator also rejected the argument that the Complainant was deemed to have consented to the disclosure because other condo owners had access to information showing the Complainant owed fees. In order for the Complainant to have provided deemed consent, the Complainant would have had to be aware that the disclosure would happen. Further, while the

fact that the Complainant was in arrears might have been known by some other individuals, the Complainant was not the source of that information. Therefore, his consent to the disclosure cannot be found to have been deemed, within the terms of section 8(2).

Statutes Cited: AB: *Condominium Property Act*, R.S.A. 2000 c. C-22, s. 44, Condominium Property Regulation, A.R. 168/2000 s. 20.52, *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, *Personal Information Protection Act*, S.A. 2003, c. P-6.5, ss. 1, 7, 20, 52.

Authorities Cited: AB: Orders P2005-001, P2006-008, P2009-012, P2012-10, P2018-03, **BC**: Order P06-03

Cases Cited: *Edmonton Police Service v. Alberta (Information and Privacy Commissioner)*, 2020 ABQB 10, *Leon's Furniture Limited v. Alberta (Information and Privacy Commissioner)*, 2011 ABCA 94 (CanLII)

I. BACKGROUND

[para 1] The Complainant made a complaint under the *Personal Information Protection Act* (PIPA or the Act) that the Grosvenor House Condominium Plan 772-2911 (the Organization) contravened the Act when it posted a notice (the Notice) on a bulletin board inside the entrance of the condo complex where the Complainant lived, that said he was in condo fee arrears.

[para 2] The Organization posted the Notice on a bulletin board in the entry way of the condo complex as the Complainant had not paid his condo fees for several months. The Organization does not dispute the fact the Notice was posted.

[para 3] The Complainant requested review by our office and subsequently requested an inquiry.

II. ISSUES

[para 4] The Notice of Inquiry, August 27, 2021, states the issues for inquiry as the following:

1. Did the Organization disclose "personal information" of the Complainant as that term is defined in PIPA?

2. Did the Organization 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,

    a. Did the Organization have the authority to disclose the information without consent, as permitted by section 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?

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

III. DISCUSSION OF ISSUES

1. Did the Organization disclose "personal information" of the Complainant as that term is defined in PIPA?

[para 5] The Act defines "personal information" as "information about an identifiable individual" (section 1(1)(j)).

[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] With his complaint, the Complainant provided photographs of the Notice posted on the bulletin board. The bulletin board is shown to be located above the residents' mailboxes. The Notice states:

> Notice to Owners
> As of March 2, 2018 the Owner below is in condo fee arrears of 8 months
> Suite #[…] – Owner – [the Complainant]

[para 8] The Notice includes the Complainant's name, suite number, and information about his financial situation; specifically, that he owes condo fees.

[para 9] The information is personal information of the Complainant. It is posted in an area that is accessible to other condo residents. It is clear from the Notice – that it is addressed to other condo owners – that it was intended to be read by other residents.

[para 10] This is sufficient to find that the Organization disclosed the Complainant's personal information.

2. a. Did the Organization have the authority to disclose the information without consent, as permitted by section 20 of PIPA?

[para 11] Section 20 permits an organization to disclose personal information without consent in particular circumstances. The Organization argues that it had authority under section 20(i) of the Act to disclose the Complainant's information. Based on the Organization's submission, sections 20(b) and (j) are also relevant. These provisions state:

> *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:*
>
> *...*
>
> *(b) the disclosure of the information is authorized or required by*
>
> *(i) a statute of Alberta or Canada*
>
> *(ii) a regulation of Alberta or a regulation of Canada*
>
> *(iii) a bylaw of a local government body, or*
>
> *(iv) a legislative instrument of a professional regulatory organization;*
>
> *...*
>
> *(i) the disclosure of the information is necessary in order to collect a debt owed to the organization or for the organization to repay to the individual money owed by the organization*
>
> *(j) the information is publicly available as prescribed or otherwise determined by the regulations;*
>
> *...*
>
> *(m) the disclosure of the information is reasonable for the purposes of an investigation or a legal proceeding*
>
> *...*

[para 12] Section 1(1)(f) of the Act defines the term "investigation" for the purposes of the Act. It states:

> *1(1) In this Act,*
>
> *(f) "investigation" means an investigation related to*
>
> *(i) a breach of agreement,*
>
> *(ii) a contravention of an enactment of Alberta or Canada or of another province of Canada, or*
>
> *(iii) circumstances or conduct that may result in a remedy or relief being available at law,*
>
> *if the breach, contravention, circumstances or conduct in question has or may have occurred or is likely to occur and it is reasonable to conduct an investigation [...]*

[para 13] Section 1(1)(g) of the Act defines the term "legal proceeding" for the purposes of the Act. It states:

> *1(1) In this Act,*
>
> *(g) "legal proceeding" means a civil, criminal or administrative proceeding that is related to*
>
> *(i) a breach of 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 14] 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 15] The Organization states that at the time the Notice was posted, the Complainant was the registered owner of the condo unit in which he resided. It states that the Complainant stopped paying his condo fees in August 2017. The Organization states that the board of directors (Board) sent numerous reminders and notices to the Complainant. The Organization states that the reminders included monthly emails and putting reminders and notices under the Complainant's door.

[para 16] In January 2018 the Organization filed a caveat on the unit title regarding the unpaid fees. The Organization provided a copy of the unit title showing the caveat.

[para 17] In March 2018, the Organization posted the Notice on the bulletin board. It states that the bulletin board is above the residents' mailboxes. It argues:

> The mailboxes are located down the hallway to the right of the elevators, as more particularly shown in the copies of the pictures collectively attached and marked as **Exhibit "B".** Other than retrieving mail, the only reasons for entering the hallway located by the mailboxes are to dispose of garbage, access the stairwell, access the contractor's washroom, and access the superintendent's suite. Of note, the stairwell is only accessible to residents who have a key, the contractor's washrooms are locked at all times and are only for use by contractors working in the building, and the superintendent's suite is only accessible by the superintendent. Further, there is no commercial activity in the building (i.e., no retail or commercial units). It was reasonable for the Organization to expect that only Owners would view the Notice on a visit to the Condominium.

[para 18] The Organization argues that this approach was successful, as the Complainant contacted the Board about the Notice almost immediately.

[para 19] The Organization states that in July 2018, it instructed counsel to commence legal action to recover the fees owed by the Complainant. The Organization states that the Notice was posted as a last effort to collect the fees owed, without resorting to a court action.

[para 20] The Organization argues that the information disclosed about the Complainant is "less sensitive", which supports finding that the disclosure was reasonable. It also states that it had attempted less intrusive methods to encourage the Complainant to pay his fees, which were unsuccessful. It states:

> [The Organization] hoped that it could avoid the costs of going to court to enforce against the Complainant by putting a Notice in the common area. Other than going to court, there was no other reasonable method to collect this debt.

[para 21] The Organization also argues that this information was otherwise available to other condo unit owners by virtue of the Organization's bylaws. The Organization points to section 44 of the *Condominium Property Act*, R.S.A. 2000 c. C-22, which states:

> *44(1) On the written request of an owner, purchaser or mortgagee or the solicitor of an owner, purchaser or mortgagee, or a person authorized in writing by any of those persons, the corporation shall, within 10 days after receiving the request, provide to the person making the request any prescribed information or documents as requested by that person.*

[para 22] The 'prescribed information' is set out in section 20.52 of the Condominium Property Regulation. The relevant part of that provision states:

> *(h) in respect of a particular fiscal year, a copy of*
>
> *(i) all approved minutes of all general meetings of the corporation, if available,*
>
> *(ii) draft minutes of general meetings, if approved minutes are not available, for meetings that occurred at least 30 days before the date of the request, and*
>
> *(iii) approved minutes of board meetings;*

[para 23] The Organization argues that section 20.53 of the Regulation states that a condo owner is "not precluded from making copies of any information or documents provided under s. 44 of the CPA…" Section 20.53 sets out fees that may be charged by a condo corporation for requested documents. Section 20.53(3) sets out fees that can be charged by a person acting at arm's length from the condo corporation, for providing requested documents. This provision does not appear to apply to the facts in this case. Further, it may be the case that condo owners can make copies of documents; however, the conduct of other condo owners is not at issue in this inquiry.

[para 24] The Organization pointed to provisions in its bylaws, provided with its initial submission, that grant all owners the right to inspect accounts and minute books of the Organization (section 15(f)). The Organization provided Board meeting minutes that discussed which condo suites were in arrears of condo fees. The Complainant's suite was noted in September 2017 minutes, April, July and August 2018 minutes. The Organization further states:

> Owners, including the Complainant, are partners in running, owning and managing the Organization. As such, the Owners have a peer like relationship that requires an increased level of information sharing between them and a lower threshold for what is considered sensitive. This is supported by the Owner's right pursuant to the Bylaws, *CPA*, and the *Regulations* to have access to all accounts and Board minutes. Considering the *CPA* and *Regulations* permit Owners to publish the Board meeting minutes, the better view is the minimal information published in the Notice is not sensitive information.

[para 25] The Complainant did not object to his suite number, or fees owed, appearing in the Board meetings and minutes.

[para 26] The Complainant disputes the arguments made by the Organization in its initial submission. He states (emphasis in original):

> By the timeline of events presented by the organization, this action took place in March of 2018, a full 2 months **after** a legal caveat was filed against my unit, in January of 2018. I maintain that since the financial interests of the organization had been protected by then, this notice was not in fact, intended to get my attention, but was intended to publicly damage my reputation.
> The statement by the Organization about the location of the mailboxes is, in fact, not the whole truth. The mailboxes are located to the immediate left of the entrance foyer, for anyone leaving the elevators. In plain view of **anyone** leaving the elevators. The notice was placed, not on the notice board, but on the wall at the far right of the mailboxes. I believe that this was to gain the maximum exposure to **everyone** exiting the elevators. The hallway referred to begins **after** the mailboxes, after a very distinct transition from the mailbox/elevator area. Given the positioning of the notice, it is in fact **not** reasonable to assume that only owners would view the notice.
> The notice did result in my contacting the Organization immediately, but not in the way they described. I was furious about the serious breach of my privacy and made my complaint to OIPC as a result, in July 2018. The outstanding condo fees were not paid off until the sale of the unit, as per the caveat on title, in January 2020, so this action did not serve any purpose, other than damage to me.

Analysis

[para 27] Before addressing the particular provisions in section 20, I will address the Organization's argument that the information posted in the Notice was either already known to the other owners, or was in the public domain.

[para 28] I understand that the Complainant's owed fees were discussed in Board meetings and included in the minutes to those meetings. Other condo owners and mortgagees can request copies of those meeting minutes. The caveat on the Complainant's title could be viewed by any potential buyer.

[para 29] In *Edmonton Police Service v. Alberta (Information and Privacy Commissioner)*, 2020 ABQB 10 (*EPS*), the Court considered whether personal information of a police officer was sufficiently known to the public such that disclosing the personal information in response to an access request under the *Freedom of Information and Protection of Privacy Act* (FOIP Act) would be an unreasonable invasion of privacy. The Court considered the fact that the officer's

information was already available to the public insofar as it was contained in a court decision, transcripts of the hearing, and media article about the proceeding.

[para 30] The Court found (at paras. 612-613):

> Transcripts are not (e.g.) stored and accessible online, or even available for purchase at a Court Clerk's counter. There was no evidence respecting the number of requests for transcripts or of the circulation of even a single transcript of the ***Kubusch*** hearing.
>
> Neither the transcript alone nor the transcript coupled with the newspaper article and the "results of inquiry" dissemination could reasonably constitute "extensive" public disclosure.

[para 31] The Court noted that the court decision is available online, via a free and unrestricted website (CanLII). Even so, the Court found (at para. 617):

> But second, there is a difference between public availability in the sense of a decision being potentially searched out by viewers, and public availability in the sense of actual notice of a decision in media reports, in media reports that are actually read or listened to by individuals. The mere fact that a decision is on CanLII does not mean that any significant number of people in Alberta are aware that the decision is there. CanLII contains more than 2.5 million decisions: https://www.canlii.org/en/databases.html. There are nearly 87,000 Alberta decisions alone: https://www.canlii.org/en/databases.html#abd. To a degree, any particular decision is hidden by numbers. Particular decisions are not necessarily pushed out to readers. There was no evidence of the number of downloads or views of the ***Kubusch*** decision. There was no evidence about whether this sort of evidence was even available.

[para 32] While this decision relates to the disclosure of personal information under the FOIP Act, the Court's comments are nevertheless instructive in this case. The Court cautions that the mere fact that information could be found by members of the public does not mean it is widely known by the public. Following this reasoning, the fact that other condo owners *could* review the Board meeting minutes that discuss which suites are in arrears does not make that information so widely known that the Organization cannot be said to have disclosed it by posting the Notice.

[para 33] Further, the Board meeting minutes provided by the Organization show that where owners owed fees, they were identified by suite number, and not by name. Many owners who have access to the meeting minutes may know the name of the owner of the Complainant's suite, but it seems likely that at least some do not. Therefore, by identifying the Complainant by name in the Notice, the Organization disclosed more information than what was in the minutes.

[para 34] Lastly, the Notice was viewable by people other than the condo owners or potential buyers of the Complainant's suite. Regardless of whether the Notice was posted on a bulletin board around the corner from the main foyer, the bulletin board is located above the unit mailboxes. Tenants (who are not owners) would use those mailboxes. Individuals caring for residents or looking after a condo while an owner was away may also use those mailboxes. Visitors have access to the area, whether or not they are likely to use it. Further, the Organization states that the hallway in which the Notice was located is also used to dispose of garbage; therefore tenants, caregivers, visitors, etc. may use that hallway for that purpose as well. There is

no indication that tenants, caregivers, visitors etc. would otherwise have had access to information about the Complainant's fees being owed.

[para 35] I find that the Organization disclosed the Complainant's personal information in the Notice. I will consider below whether the disclosure was authorized under the Act, including under the provision relating to "publicly available" information.

Information necessary to collect a debt

[para 36] Section 20(i) permits disclosure of personal information without consent if the disclosure is necessary to collect a debt. The Organization states that PIPA does not define "necessary." It points to orders from the BC Information and Privacy Commissioner's Office, and the discussion of what is "necessary" under BC's *Personal Information Protection Act*. The Organization argues that these discussions are applicable to Alberta's Act, given the similarity between Alberta and BC's Acts. The Organization has provided information in relation to the test used in the BC Orders.

[para 37] Past Orders of this Office have also discussed what is meant by the phrase "necessary" in Alberta's Act. For example, several Orders have noted that the term "necessary" in section 7 of the Act does not mean 'indispensable'. In Order P2012-10, the Director of Adjudication found (at para. 19):

> Thus, even if the appropriate test for collecting the information is that collection is necessary for achieving the goal, in my view, the test of *necessity* is met where the collection is reasonable *in the sense that* it provides an important and effective method for achieving the goal.

[para 38] I agree with this analysis, and will apply the above test in this case. I will consider the arguments made by the Organization with respect to the BC test, in relation to the test above.

[para 39] The Organization states that the Notice was effective, insofar as the Complainant responded to the Board soon after it was posted in March 2018. However, the Organization also states that it initiated legal proceedings in July 2018 to obtain payment from the Complainant.

[para 40] The Complainant states that the Notice was ineffective, and that he contacted the Board after it was posted, only to complain about the disclosure of his information. The Complainant did not pay his fees until he sold his unit.

[para 41] The Organization argues that "[o]ther than going to court, there was no other reasonable method to collect this debt." I understand the Organization's frustration; however, it appears from the information before me that initiating legal proceedings *was* the reasonable avenue. That the Organization did not want to incur the costs does not grant the Organization authority to publicly post the Notice.

[para 42] The Organization discussed the steps it can – and did – take to ensure its financial interest in the fees owed by the Complainant. It had a caveat placed on the Complainant's title. It started the process of commencing legal action against the Complainant. It appears that the legal

action became unnecessary, as the Complainant ultimately sold his unit, and the Organization received its fees (or an agreed portion of the fees).

[para 43] In my view, posting the Notice did not provide "an important and effective method" for meeting its goal. The Complainant was aware that his fees were owed; the Organization detailed all the ways that it brought this to the Complainant's attention. Therefore, the Notice wasn't necessary to make the Complainant aware of the issue. The Organization did not say why it believed the public Notice would cause the Complainant to pay the fees. In other words, the Organization did not say what 'missing link' it believed the Notice would fill, such that the Complainant would pay the fees owed.

[para 44] There are other reasons that the Complainant might not have paid his condo fees, other than a lack of awareness. For example, if the Complainant was in arrears due to a lack of ability to pay, posting a public Notice does nothing to change that fact, or to effect payment. The 'necessary' steps to collect the debt included notifying the Complainant privately, which the Organization did; place a caveat on the title, which the Organization did; and commence legal action, which the Organization clearly contemplated. That the Organization was reluctant to take this final step of initiating proceedings does not mean that any other attempt to effect payment was authorized.

[para 45] In my view, posting a public Notice is not 'necessary' to collect a debt, within the terms of section 20(i). To find otherwise would suggest that organizations such as utility companies, rental companies, etc. could publicly post information about any customer or client who is behind on their payments. In my view, section 20(i) is not intended to permit this.

Disclosure authorized by an enactment

[para 46] The Organization referred to provisions in the *Condominium Property Act*, the regulation, and the Organization's bylaws. None of those provisions address the public posting of information about fees owed by condo owners. The provisions authorize the Organization to disclose the Complainant's fees owed in Board meeting minutes; however, the Complainant has not complained about this disclosure.

[para 47] The Organization has not argued that it was authorized by an enactment to post the Notice. Therefore, I find that section 20(b) does not authorized the disclosure.

Publicly available information

[para 48] Section 7 of the Regulation defines what "publicly available information" is, for the purposes of the Act. It is a lengthy section and so I will summarize it rather than citing it entirely. Publicly available information is:

- information in a telephone directory available to the public, consisting of contact information;
- information consisting of business contact information and contained in a professional or business directory, listing or notice;

- personal information contained in a government or non-governmental registry but only if the collection, use or disclosure relates directly to the purpose for which the registry is established;
- personal information contained in a record of a quasi-judicial body, if the collection, use or disclosure relates directly to the purpose for which the information appears in the record;
- personal information contained in a publication such as a magazine, book or newspaper available to the public and provided by the individual;
- personal information under the control of an organization outside Alberta that would, if collected from within Alberta, fall within one of the above categories.

[para 49] The Complainant's information contained in the Notice does not fall within any of these categories.

[para 50] As discussed above, the Organization had argued that information about the fees owed by the Complainant is already available to a segment of the public. Despite this, it would nevertheless not fall within the definition of "publicly available information" for the purposes of section 20(j), as that term is specifically defined in the Act.

Disclosure reasonable for an investigation or legal proceeding

[para 51] The Organization states that it contemplated bringing a legal action against the Complainant to obtain payment of the fees owed. It has not argued that posting the Notice was reasonable for this (or any other) legal proceeding. Rather, the Organization argues that the Notice was posted to avoid the need for a proceeding. As there is no indication that the Notice was posted to enable the Organization to bring or continue a proceeding, section 20(m) does not appear to apply.

2. 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?

[para 52] 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).

Arguments of the parties

[para 53] The Organization argues that the Complainant is deemed to have consented to the disclosure of his information under section 8(2) because "the information was common knowledge to those who would have viewed the personal information."

[para 54] It cites Order P2009-012 and BC Order P06-03, in support of its argument. It states:

> In both cases, the Commissioner accepted the concept of common knowledge as potentially supporting deemed consent. However, in these cases the evidence did not ultimately support such a finding.
>
> In the present case, the Notice was not easily accessible to the general public and was placed in a location that was reasonable for only the Owners to view. As Owners are partners in the Organization, the Complainant's personal information on the Notice was common knowledge, or *defacto* common knowledge, because:
>
> - The Complainant's personal information was in the public domain as the
> - Organization had already registered a caveat on title for the arrears of Fees.
> - The *CPA*, *Regulations* and Bylaws permit any prospective purchaser or Owner to view the records of the Organization.
> - The Bylaws allow any Owner to know whether the Complainant was in arrears.
> - The Owners, including the Complainant at the material time, had a special relationship as being partners in owning, running and managing the Organization.
> - The debt owed to the Organization is a debt owed to all Owners and thus they had the right to know.
>
> Thus, the Complainant is deemed to have consented to the disclosure of his personal information pursuant to s. 8(2)(a)(b).

Analysis

[para 55] It is clear that the Complainant did not explicitly consent to the disclosure of his information in the Notice within the terms of section 8(1); nor does section 8(3) apply.

[para 56] Section 8(2) deems an individual to consent to the collection, use or disclosure of personal information where the individual provided the information to the Organization for that purpose. This provision applies where the purpose for the collection, use or disclosure is sufficiently obvious at the time the individual provides the information such that it is apparent without having to be stated outright.

[para 57] In Order P2009-012, cited by the Organization, an individual was employed by the organization for a year. The individual ended her employment informally, by handing her keys to another employee and indicating she was quitting. The organization's management sent a memo to all staff, indicating the individual was no longer an employee and had found employment elsewhere. The memo also included information about covering the individual's former duties. This memo contained the individual's personal information.

[para 58] In that case, the organization had argued that it had the individual's deemed consent to disclose that information because the individual had made it common knowledge in the workplace that she intended to quit and obtain new employment.

[para 59] The adjudicator noted (at para. 65):

> In support, Insight [cites] Order P06-03, a decision of the Office of the Information and Privacy Commissioner for British Columbia. In that order the former Commissioner entertained the idea that there could be implied consent where what is disclosed was a matter of common knowledge; however he declined to make that finding, because there was conflicting evidence from the organization and the complainant about whether the disclosed information was in fact common knowledge.

[para 60] The adjudicator concluded that the evidence before her was inadequate to show that the individual's intent to quit was common knowledge in the workplace. She further said (at paras. 68-69, emphasis added):

> It seems to me that in order to establish that there is implied consent based on common knowledge, it must be the person whose consent is required who makes the information common knowledge. At least, this was what was being argued in Order P06-03. To find otherwise would allow other possible disclosures in breach of the Act by an organization prior to the disclosure complained about to be a basis for implied consent to a disclosure.
>
> Whether or not consent can be implied where a complainant made the disclosed information a matter of common knowledge, in this matter, there is not enough evidence to establish that the information was common knowledge, or that it was the Complainant who made it common knowledge.

[para 61] I agree with this analysis: given the wording of section 8(2), it must be the *individual whose information was disclosed* by an organization who arguably made the information common knowledge. Those are not the facts here.

[para 62] In this case, the Organization has not argued that the Complainant made it known to other residents that he owed condo fees; nor does it seem likely to be the case. I agree that the Complainant's actions (i.e. not paying his fees) *led to* the fact that he was in arrears but this is not the same as making the information common knowledge by informing other people.

[para 63] Further, in order for the deemed consent provision to apply, it would have to have been obvious to the Complainant that the Notice would be posted. Nothing before me indicates that the Complainant knew, or ought to have known, that posting the Notice was a possibility.

[para 64] This is in contrast to the facts in Order P2018-03, which found that an individual was deemed to have consented to the collection of his information via overt surveillance cameras, which had previously been brought to his attention. In that case, the individual's actions at a property were caught on the property manager's overt video surveillance system, and used to investigate a complaint about the individual's actions. It was determined that the existence of the video surveillance and its purpose (to investigate incidents that occur on the property) were obvious to the individual at the time of his actions. He was therefore deemed to have consented to the collection and use of his information by the organization, for the purpose of the investigation. In other words, the individual was aware that video footage was collected for the purpose of investigations.

[para 65] It is noteworthy in the case just discussed that while the collection and use of the individual's information was sufficiently obvious to him at the time of his actions, the organization's subsequent disclosure of the video information to the individual's employer (also located on the premises) was *not* sufficiently obvious or foreseeable to the individual. The individual could not be found to have deemed consent to this disclosure under section 8(2). Order P2018-03 concludes that while the Organization disclosed the information to the employer for a purpose relating to its investigation, "it might unduly strain the scope of section 8(2) to suggest that such a disclosure to the employer is a purpose obvious to the Complainant such that he could be said to have deemed to consent to that disclosure" (at para. 26).

[para 66] In this case, nothing before me indicates that the Complainant ought to have been aware that the Organization might disclose his information via the posted Notice. As such, I cannot find that he consented to this disclosure within the terms of section 8(2).

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 67] As I have found that the Organization did not have authority to disclose the Complainant's personal information, I do not need to consider the application of section 19.

Conclusion

[para 68] The Organization states that it "has ceased its practice of posting information such as the Notice to the common area of the Condominium, and now uses an internal website accessible only to Owners."

[para 69] The Complainant argues:

> As for the Organizations statement that any damage was minimal, I do not agree with that. This was a very **public** disclosure of my private information, that I do not believe was at all 'accidental'. I believe that further action is required to evaluate the full extent of the damage and find the appropriate compensation.

[para 70] I do not have authority under the Act to make a determination as to the extent of any damage the Complainant incurred, or assess fines or other compensation.

[para 71] Given that the Organization has amended its practice, I do not believe there is anything further for me to order.

IV. ORDER

[para 72] I make this Order under section 52 of the Act.

[para 73] I find that the Organization disclosed the Complainant's personal information without authority.

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Amanda Swanek
Adjudicator