# ALBERTA

# OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

# ORDER P2022-04

April 13, 2022

## INNER SOLUTIONS LTD.

Case File Numbers 010869 and 010870

**Office URL:** www.oipc.ab.ca

**Summary:** On October 9, 2018, the Applicant emailed an access request to Inner Solutions (the Organization) requesting on behalf of herself and her former spouse all records pertaining to services rendered including her child's individual records and sessions notes, her own records, and records regarding group sessions with her, her spouse, and her child. At the time of the access request the Applicant's child was over the age of 18.

The Organization informed the Applicant that her file was not located and may have been destroyed following the Organization's procedure for record destruction. The Organization also informed the Applicant that the information in her child's file cannot be provided to the Applicant as it constitutes the child's personal information.

The Applicant requested a review of the Organization's response and subsequently an inquiry. The Applicant raised concerns about how the Organization responded to her request and with its decision not to provide her with records in her child's file. The Applicant also raised a concern about the Organization's records management practices, specifically with respect to the destruction of her file.

The Adjudicator found that much of the information in the records at issue was not the Applicant's personal information. With respect to the parts of the records that did contain personal information of the Applicant, section 24(3)(b) applies to most of that information such that it cannot be disclosed to the Applicant. The Adjudicator also concluded that section 24(4)

does not require the Organization to sever this information and provide the Applicant with discrete items of information about her alone.

The Adjudicator found that the Organization's response to the Applicant did not fulfill its duty to assist under section 27(1).

With respect to the destruction of the Applicant's file, the Adjudicator found that the Organization did not make reasonable security arrangements to protect the Applicant's personal information. The Organization's new system for electronic file storage addresses concerns regarding unauthorized destruction. The Organization was ordered to review its policies regarding the maintenance of paper files upon the departure of a psychologist from the Organization.

**Statutes Cited: AB:** *Personal Information Protection Act*, S.A. 2003, c. P-6.5, ss. 1, 24, 27, 34 52.

**Authorities Cited: AB:** Orders P2007-002, P2009-005, P2013-04

## I. BACKGROUND

[para 1] On October 9, 2018, the Applicant emailed an access request to Inner Solutions (the Organization) on behalf of herself and her former spouse (R) requesting all records pertaining to services rendered including her child's (A) individual records and sessions notes, her own records and records regarding group sessions with her, R and A. At the time of the access request, A was over the age of 18.

[para 2] After communications between the Organization and the Applicant clarifying the request, the Organization informed the Applicant that her file was not located and may have been destroyed following the Organization's procedure for record destruction. The Applicant states that the Organization initially told her the file may have been lost.

[para 3] Regarding A's file, the Organization located the file, which included notes from sessions involving the Applicant as well as communications between the Applicant and an employee of the Organization. However, the Organization informed the Applicant that the information in A's file cannot be provided to the Applicant as it constitutes A's personal information.

[para 4] The Applicant requested a review of the Organization's response and subsequently an inquiry. The Applicant raised concerns about how the Organization responded to her request and with its decision not to provide her with records in A's file, which it located. The Applicant states that even if the Organization cannot provide her with A's session notes, the Organization is obligated to provide her own personal information from the sessions she attended with the Organization.

[para 5] The Applicant has also raised a concern about the Organization's records management practices, specifically with respect to the destruction of her file.

## II. INFORMATION AT ISSUE

[para 6] The information at issue consists of the records in A's file.

## III. ISSUES

[para 7] The Notice of Inquiry, dated January 18, 2022, states the issues for inquiry as the following:

1. Was the information in the withheld records, or any of it, responsive to the Applicant's request for the Applicant's personal information?

    a. If yes, did the Organization properly apply section 24(3)(b) (information would reveal personal information about another individual) to withhold information?
    b. If the withheld information contains or consists of personal information of the Applicant, and if section 24(3)(b) applies to this information, is the Organization reasonably able to sever the information to which this section applies, and provide the remaining personal information of the Applicant, as required by section 24(4)?

2. Did the Organization comply with section 27(1) of the Act (duty to assist applicants)?

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

## IV. DISCUSSION OF ISSUES

### 1. Was the information in the withheld records, or any of it, responsive to the Applicant's request for the Applicant's personal information?

[para 8] Under PIPA, an applicant has a right of access only to their own personal information.

[para 9] The Applicant's request for her own file was a request for her own personal information. The Organization did not locate records responsive to this part of the Applicant's request.

[para 10] Regarding her request for A's file, the Applicant states that she participated in joint meetings with the psychologist, and that her information is contained in those meeting notes. The records at issue include notes from meetings that included the Applicant (and R) and the psychologist. The Applicant's submissions focus primarily on these meeting notes.

[para 11] The Organization states that these meetings related to A's treatment. The records at issue provided by the Organization indicate the same. It is clear that the discussions between the Organization and the Applicant relate to A's treatment.

[para 12] That said, the records contain the Applicant's personal information, as well as A's. For example, the records include the Applicant's opinion of A, including their treatment and progress.

[para 13] In Order P2007-002, the Director of Adjudication considered a similar situation to the one at hand. An applicant had made an access request to a psychologist for the files relating to a custody assessment involving the applicant, his former spouse, and their two children. The Director concluded that opinions provided by one individual about another, are the personal information of both individuals. She found (at paras. 13-15):

> The Psychologist takes the position that opinions expressed about the Applicant by other persons are in substance "information about *the information provider's* own thoughts, beliefs, perceptions, history and opinions", and thus these opinions are their personal information rather than that of the Applicant.
>
> I do not accept this argument. Whether or not a statement of opinion about another person is also the personal information of the giver of the opinion, it is hard to dispute that a statement as to, for example, whether a person is a caring and responsible parent is information "about" him and is thus, according to the definition in the Act, his personal information.
>
> Further, section 24(3)(c) of the Act does not permit me to accept the Psychologist's argument. This section provides:
>
> > *24(3) An organization shall not provide access to personal information under subsection (1) if …*
> >
> > > *(c) the information would reveal the identity of an individual who has in confidence provided an opinion about another individual and the individual providing the opinion does not consent to disclosure of his or her identity.*
>
> Section 24(3)(c) is an exception to the general duty to provide personal information of the person seeking the information. Unless the information described in the provision includes personal information of the person seeking it, an exception makes no sense. Thus, the provision implicitly treats an "opinion about another individual" that reveals the identity of its maker as the personal information of the other individual (the requestor). This inference may be taken to establish that under the Act, an opinion about a person is the personal information of the person about whom it is given.

[para 14] The Director goes on to consider other provisions of PIPA, as well as similar provisions under the *Freedom of Information and Protection of Privacy Act* (FOIP Act) and concludes that an opinion can be the personal information of both the individual the opinion is about, as well as the individual giving the opinion.

[para 15] In this case, much of the information in the records the Organization located is not the Applicant's personal information. Most of the records provided to me contain only A's personal information. However, the records provided by the Organization include notes of sessions that included the Applicant, R, and the psychologist treating A. The purpose of the sessions appear to be to discuss A's issues and treatment by the psychologist. These notes contain the Applicant's personal information.

[para 16] Further, the records at issue contain correspondence between the Applicant and Organization, which contain the Applicant's personal information.

**1a. If yes, did the Organization properly apply section 24(3)(b) (information would reveal personal information about another individual) to withhold information?**

[para 17] The Organization's index of records shows that it also applied section 24(3)(a) to pages 94-96, 102-106, 109-120 and 137-148. Pages 94-46 and 102 post-date the Applicant's access request and are therefore not records at issue in this inquiry. Pages 103-120 and 137-148 were provided by the Organization to the Applicant with its rebuttal submission. These records are comprised of communications between the Applicant and Organization (emails and texts). These pages are no longer at issue.

[para 18] The Organization's index of records does not include all of the pages provided to me by the Organization for the inquiry (pages 7-10, 13-23, 25-62, 64-78, 80-92, 97-101, 107, 108, 122-136, 149-158). By letter dated March 29, 2022, I asked the Organization to confirm its position with respect to these records. The Organization states in its rebuttal submission that these pages are session and contact notes for A, and do not relate to the Applicant.

[para 19] Having reviewed these pages, I agree that the Organization has properly characterized them, except for pages 149-153. In my letter, I had noted that these pages, in addition to pages 137-148, consist of communications between the Organization and Applicant, and asked the Organization for additional information regarding its decision not to disclose these to the Applicant. As noted above, the Organization provided pages 137-148 to the Applicant with its rebuttal submission, but not pages 149-153. The Organization's rebuttal submission did not refer to pages 149-153 at all.

[para 20] Page 149-152 appear to be a continuation of a text conversation comprising pages 137-148; there is no explanation as to why they were not provided to the Applicant with pages 137-148. Page 153 is comprised of an email chain between the Applicant and psychologist; it is likewise unclear why this page was not provided to the Applicant. Because the Organization's submissions and index of records do not refer to these pages, it is unclear whether the Organization has applied an exception to the information. I will consider whether any of the mandatory exceptions to access apply.

[para 21] Sections 24(3) sets out the mandatory exceptions to access:

> *24(3) An organization shall not provide access to personal information under subsection (1) if*
>
> > *(a) the disclosure of the information could reasonably be expected to threaten the life or security of another individual;*
> >
> > *(b) the information would reveal personal information about another individual;*
> >
> > *(c) the information would reveal the identity of an individual who has in confidence provided an opinion about another individual and the individual providing the opinion does not consent to disclosure of his or her identity.*

[para 22] If a mandatory exception applies to information, the organization must withhold that information.

[para 23] Under section 24(3)(b), where personal information about the Applicant would reveal personal information of A, that information must be withheld, unless A's personal information can be severed (I will discuss severing information in the next section of this Order).

[para 24] The notes of sessions involving the Applicant appear at pages 5-6, 11-12, 24, 63 and 79 of the records at issue. These notes are all handwritten, and can be difficult to decipher. The information relating to the Applicant consists primarily of statements made by the Applicant about A. However, in a few instances, the notes include the psychologist's thoughts about the Applicant's demeanor and actions.

[para 25] With respect to the statements made by the Applicant about A, those statements are the personal information of both the Applicant and A. In Order P2007-002, the Director of Adjudication discussed a situation in which responsive information consists of statements made by one individual about another are intertwined. She found (at para. 55):

> Where a statement is at the same time the personal information of the Applicant and that of another person, the information of both is inextricably intertwined. Thus, to the extent that the personal information of the Applicant is contained in statements about him made by identifiable individuals, the part of the information that is also the personal information of the individuals making the statements must be withheld, on a mandatory basis, under section 24(3)(b).

[para 26] I agree with this analysis. The statements made by the Applicant about A must be withheld under section 24(3)(b).

[para 27] With respect to the psychologist's observations about the Applicant, many also relate to A. The psychologist's observations about the Applicant were primarily concerned with the Applicant's relationship with A, which is to be expected given the records are from A's treatment file. A's information in these observations cannot be severed from the Applicant's information; as such, these observations must be withheld.

[para 28] There are a few instances in which the psychologist's observations relate to the Applicant alone, such that section 24(3)(b) does not appear to apply. These instances appear at pages 5-6, and 63. In the next section of this Order, I will discuss whether the Organization is required to sever these records and provide this information to the Applicant.

[para 29] I have noted that the Organization appears to continue to withhold copies of communications between the Organization and the Applicant, at pages 149-153. Order P2007-002 also addressed a similar situation (at para. 38):

> As discussed earlier (at para 26), the letters and records of phone calls, from the Applicant's lawyer to the Psychologist, written or made on his behalf, are his communications and thus are his personal information. These letters or notes do not have to be withheld even though they contain references to other persons and some information about them, for example the names and ages of his children. This

is information that the Applicant himself supplied; its disclosure would not *reveal* this personal information to him, and it would make no sense to withhold it. The same is true for requests made by the Psychologist for information about the Applicant to persons whose names the Applicant provided for this purpose, or to which the Applicant consented. There is also no reason for the Psychologist to withhold a "to whom it may concern" letter that she wrote on the Applicant's behalf (and it is thus his personal information) by reference to section 24(3)(b).

[para 30] Following the analysis above, I find that the Organization cannot withhold pages 149-153 from the Applicant under section 24(3)(b).

[para 31] Because these pages are not noted on the Organization's index, or otherwise discussed in its submission, I do not know if the Organization has also applied section 24(3)(a) to the information on these pages. I cannot see how disclosing communications between the psychologist and Applicant could reasonably be expected to threaten the life or security of A or any other individual, given that this information was supplied by the Applicant or had already been received by the Applicant from the psychologist.

[para 32] The only other mandatory exception to access is section 24(3)(c), which applies to the identity of an individual who provided an opinion in confidence. There is no indication that this exception would apply to information in the records not already properly withheld under section 24(3)(b).

[para 33] I conclude that the Organization cannot withhold the information on pages 149-153 from the Applicant.

[para 34] I find that section 24(3)(b) applies to most of the information in the records at issue that is the Applicant's personal information, except the psychologist's observations about the Applicant alone appearing at pages 5-6, and 63, and the communications between the Applicant and Organization at pages 149-153.

**1b. If the withheld information contains or consists of personal information of the Applicant, and if section 24(3)(b) applies to this information, is the Organization reasonably able to sever the information to which this section applies, and provide the remaining personal information of the Applicant, as required by section 24(4)?**

[para 35] Section 24(4) states that if the third party personal information can reasonable be severed from records, the Organization must provide access to the remainder:

> *24(4) If, in respect of a record, an organization is reasonably able to sever the information referred to in subsection (2)(b) or (3)(a), (b) or (c) from a copy of the record that contains personal information about the individual who requested it, the organization must provide the individual with access to the record after the information referred to in subsection (2)(b) or (3)(a), (b) or (c) has been severed.*

[para 36] As noted in Order P2007-002, the Organization's duty to provide the Applicant with her personal information is subject to what is reasonable (section 24(1.1)). Similarly, the duty to sever information subject to sections 24(3)(a) or (b) from a record and provide the Applicant

with the remainder, is subject to what is reasonable. In that Order, the Director discussed whether it would be reasonable to require the psychiatrist to review their records and provide discrete items of information to the applicant. She found (at para. 72):

> Only the small parts of the information that were opinions or statements of fact about the Applicant, and about which it was clear that the statements alone could not identify their maker, would be left. In my view, even if it were possible to accomplish this, it is not reasonable in this case to require an organization to undertake such an arduous and largely fruitless exercise. The same reasoning applied to minor, discrete items of information generated by the Applicant himself that are interspersed throughout the information of others. There may be circumstances in which, despite the fact that it would be difficult to do so, it would be important to identify and disclose small, discrete items of information. However, this is not such a case in my view, and in these particular circumstances, I will not require the Psychiatrist to do this.

[para 37] In her rebuttal submission, the Applicant argues that her information should have been maintained separately from A's information. The Organization noted that the Applicant's file had been maintained separate from A's file. As it was not located in response to the Applicant's request, any information in that file is not at issue.

[para 38] The responsive records in this case relate to A's file. The few discrete items of information that relate to the Applicant alone at pages 5-6 and 63 comprise a very small portion of each page. I agree with the Director in the excerpt above, that there may be some cases in which small, discrete items of information are nevertheless significant and ought to be disclosed to an applicant. However, from the information before me, I conclude that this is not such a case. In my view, it is not reasonable to require the Organization to review all of A's treatment file and sever most of the information on a page that is either not the Applicant's personal information or is so intertwined with A's information such that it cannot be provided to the Applicant, in order to provide a few partial sentences to the Applicant that relate to her alone.

[para 39] I find that section 24(4) does not require the Organization to sever information.

**2. Did the Organization comply with section 27(1) of the Act (duty to assist applicants)?**

[para 40] Section 27(1)(a) of the Act states the following:

> *27(1) An organization must*
>
> *(a) make every reasonable effort*
>
> *(i) to assist applicants, and*
>
> *(ii) to respond to each applicant as accurately and completely as reasonably possible,*
>
> …

[para 41] The duty to assist includes conducting an adequate search for responsive records, as well as informing the applicant, in a timely manner, what steps have been taken to search for the requested records (Order P2009-005, at para. 47).

[para 42] In this case, the Applicant emailed her access request on October 9, 2018. The Organization clarified the request on October 10. The Applicant followed up with the Organization on October 25, 2018, asking when she might expect to receive the requested records. The Applicant provided these emails with her requests for review.

[para 43] The Organization states that when it received the request, it searched for the Applicant's files and informed her it couldn't be located "which was deduced to be because it had been destroyed by our regular procedure." The Applicant states that she was informed the file had been lost.

[para 44] I do not have a copy of the Organization's response to the Applicant. I do not know if the Organization informed the Applicant that her file was likely destroyed in accordance with its records retention process, or if it merely assumed this to be the case.

[para 45] The Organization states that at the time of the Applicant's request, its policy had been to keep closed client files for seven years. The Applicant believes her files would be dated 2012 or 2013; a 2012 file would not be eligible for destruction until 2019. The Applicant's request was made in late 2018.

[para 46] No evidence or argument has been presented to suggest I should not accept the Organization's statement that it no longer has a copy of the Applicant's file. The Organization states that it searched for the file "many times to ensure it was not overlooked and it is not there." I accept that the file no longer exists. While the Organization informed the Applicant that it no longer has her file, I do not know whether the Organization informed the Applicant of where it searched, or whether it believed it was destroyed and why. Merely informing an applicant that requested records cannot be found is not a sufficient response under PIPA. Therefore, I cannot find that the Organization met its duty to assist the Applicant.

[para 47] The Organization's response regarding A's file was also insufficient. From the submissions before me, I understand that the Organization informed the Applicant she could have the file (or parts of the file) if A provided consent. It also gave the Applicant an option regarding whether the Organization or the Applicant would speak to A about whether they consent. From the submissions, I understand that this is a best practice for the type of records sought by the Applicant.

[para 48] However, this response is not a response under PIPA. PIPA requires the Organization to inform the Applicant whether access will be granted and if not, which exceptions were applied to refuse access. I understand that if A consented to the release of the files, this response may not have been necessary. However, it is clear that consent was not obtained; once it was clear that consent was not being granted, the Organization was required to conclude its response to the Applicant under PIPA. This response should have included a statement that information would not be provided, citing the appropriate exceptions. There is no indication this was done.

[para 49] I find that the Organization did not fulfill its duty to the Applicant. As the relevant information has been provided to the Applicant through this inquiry process, I do not need to order the Organization to respond again.

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

[para 50] This issue relates to the Organization's response regarding the Applicant's file, which was not located in response to her request and is believed to have been destroyed.

[para 51] The Organization argues that the destruction of the Applicant's file was not a contravention of PIPA, as nothing in the Act requires it to maintain the file.

[para 52] I agree that PIPA does not require an organization to retain personal information for a specified period of time. Section 35 of the Act addresses the retention of personal information, but does not require an organization to retain personal information for a specified time. Rather, it requires an organization to retain personal information for only as long as is reasonable for legal or business purposes.

[para 53] The issue with respect to the Applicant's file is whether the Organization had reasonable security arrangements to protect the Applicant's information in that file from risks including unauthorized destruction.

[para 54] 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 55] 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 56] As noted above, the Organization had a policy of destroying 'closed' files after seven years. The Applicant's file appears to have been destroyed prior to seven years having passed. The Organization agrees that this is the case, and states that it may have been destroyed in error.

[para 57] The Organization also notes that the Applicant was seeing a psychologist other than the one providing services to A. The Organization states that this psychologist has since left the Organization. It posits that this psychologist may have misplaced the Applicant's file. The Organization also states:

> It is standard practice for psychologists to leave old files in [the Organization's] storage if they resign, however there is no person who oversaw that this was actually done. It is possible that [the psychologist] may have erred in where she stored the file, or that it may have been taken with her.

[para 58] Regarding its security arrangements more generally, the Organization states:

> Any paper files that have been inactive for 2 or more years are moved to an off-site private storage and are kept in storage cabinets that are locked. The only people with access to the off-site files are [the Organization's] owners.
>
> Historically, once a year one of the owners would go through the files and destroy any that were 7 years or older by using a secure shredding company called Enviroshed.

[para 59] In my view, the fact that the Organization cannot state whether the Applicant's psychologist stored the Applicant's file in accordance with the Organization's policy or took the file with her indicates a gap in its security arrangements. The Organization's submission do not indicate that it had a policy to ensure that employees who leave the Organization properly stored their files before leaving. Given the sensitive nature of the information in these files, the Organization should have policies to address what happens to ensure the security of the files when psychologists leave the Organization.

[para 60] The Organization states that it since moved to a new file management system that allows notes to be maintained electronically. It states:

> This has been helpful at alleviating the possibility of human error in disposing of a physical file by accident. [The] is software is PIPA/PIPEDA compliant. Moreover, we have also created a data system that allows us to see when each file is eligible for destruction according to PIPA guidelines. Files are now clearly marked with the date of last contact. They are also flagged if a client is an adolescent, given that the guidelines for storage of adolescent clients are different than if the client is an adult.

[para 61] The Organization also provided me with a copy of its file management policy. I agree that this new system will help ensure files are not destroyed accidentally. However, I note that the policies state that session notes can be scanned to the system, which indicates that paper files may continue to exist. It is not clear whether the Organization has policies regarding the security of any paper files, including what happens to the files if a psychologist leaves the Organization.

[para 62] I will order the Organization to review its policies to ensure the continued security of paper files, should any continue to exist, when a psychologist leaves the Organization. Whether those files should be maintained by the Organization or leave with the psychologist is not matter that falls within my purview; however, if it is appropriate for the Organization to maintain those files (or ensure their destruction), the Organization should have policies to ensure this is done in a secure manner. If paper files continue to exist and the Organization does not have a policy to address the proper transfer, maintenance, or destruction of those files upon the departure of a psychologist, it is to develop one.

## IV. ORDER

[para 63] I make this Order under section 52 of the Act.

[para 64] I find that much of the information in the records before me is not the Applicant's personal information.

[para 65] With respect to the parts of the records that do contain personal information of the Applicant, I find that section 24(3)(b) applies to most of that information such that it cannot be disclosed to the Applicant. I further find that section 24(4) does not require the Organization to sever this information and provide the Applicant with discrete items of information about her alone.

[para 66] I find that the Organization's response to the Applicant's request was not sufficient to meet its duty to assist the Applicant.

[para 67] I find that the Organization did not make reasonable security arrangements to protect the Applicant's personal information. The Organization's new system for electronic file storage addresses concerns regarding unauthorized destruction. I order the Organization to review its policies regarding the maintenance of paper files upon the departure of a psychologist from the Organization, in accordance with paragraph 62.

[para 68] I order the Organization to notify me and the Applicant in writing, within 50 days of being given a copy of this Order, that it has complied with the Order.

_____
Amanda Swanek
Adjudicator