

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

REQUEST FOR ADVANCE RULING P2012-AR-01

March 14, 2012

**AYSA PHARM INC.**

Case File Number P2079

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

**Summary:** AYSA Pharm Inc. ("AYSA") requested an advance ruling on whether it should release contact information about its employees under the *Personal Information Protection Act* ("PIPA") to the Union who had recently become certified to represent some of its employees. The Union objected to the application for an advanced ruling. After consulting the parties, the Commissioner delegated his authority to decide the matter to the British Columbia Information and Privacy Commissioner. After reviewing OIPC Guidelines formulated to assist organizations considering seeking an advance ruling, she concluded it was not appropriate to issue an advance ruling in this case. An advanced ruling should be reserved for matters where the law under PIPA is settled, the facts of the case clear and the matter is confined to the applicant party only. Extenuating circumstances, such as related legal actions or jurisdictional questions surrounding an issue do not predispose a matter to an advance ruling. In this case the impact of any advance ruling could extend beyond AYSA, the organization seeking this ruling. Second, there is a dispute in this case as to whether the OIPC is the right forum to hear this matter. Third, the matter advanced by AYSA presented a new legal issue. Fourth, the facts were not settled and would require further extensive inquiries. Finally, any advance ruling could well be moot in light of other legal proceedings in which the parties are involved.

**Statutes Considered:** *Personal Information Protection Act*, S.A. 2003, c. P-6.5, s. 36(3).

**Authorities Cited:** AB: *Re Economic Development Edmonton*, [2002] A.L.R.B.D. No. 91.

## I. INTRODUCTION

[para 1] This case concerns a request by AYSA Pharm Inc. ("AYSA") for an advance ruling on whether it should release certain employee contact information to the United Food and Commercial Workers, 401 ("Union"). AYSA made the request in the midst of a dispute about the Union's certification of employees at its Shopper's Drug Mart store #316 ("Store").

[para 2] The Union filed an application for certification of Store employees on August 29, 2011, and won the certification vote held on September 29, 2011. AYSA is now challenging that result, through an application for judicial review of the Board's certification decision and complaints with the Alberta Labour Relations Board ("Labour Board").

[para 3] After the Union was certified to represent Store employees, the Union filed a Notice to Bargain with AYSA on October 24, 2011. In addition, the Union asked AYSA to provide it with the contact information for employees at the Store. As AYSA did not respond to the Union, the Union filed a complaint with the Labour Board on November 22, 2011, asking, among other things, that AYSA produce contact information for the Store employees. AYSA then wrote to the Office of the Information and Privacy Commissioner for Alberta ("OIPC") on November 30, 2011, seeking an advance ruling under the *Personal Information Protection Act* ("PIPA") as to whether it should release this contact information. AYSA said if the answer to that question was yes, it also asked what type of information should be provided.

[para 4] AYSA says that in the normal course of events a properly certified union would be entitled to the contact information of employees. However, AYSA argues in this case the status of the Union as a certified bargaining agent is subject to judicial review. In these circumstances, AYSA submits that it may not be authorized under PIPA to disclose this information without the employees' consent.

[para 5] The Union submits that it is entitled to this personal information pursuant to the *Labour Relations Code* ("Code") and, therefore, opposes the application for an advance ruling under PIPA. It argues that AYSA's judicial review application does not act as a stay of its certification status.

[para 6] On December 1, 2011, Commissioner Frank Work, Q.C. advised the parties that the law firm acting for AYSA also represents the OIPC in judicial review proceedings, though the specific lawyer involved for AYSA in this case never has. Given the circumstances, he asked if either of the parties objected to him making a decision in the matter. One party objected. As a result, under s. 43 of PIPA, Commissioner Work delegated his authority to me to make a decision in this matter.

## II. ISSUES

[para 7] The issues referred to me by Commissioner Work are set out in his letter to me dated December 6, 2011. Commissioner Work delegated me his powers under s. 36(3) of PIPA to:

1. Decide whether to give an advance ruling to AYSA Pharm Inc., as set out in its application dated November 30, 2011,<sup>1</sup> when that application is opposed by the United Food and Commercial Workers, Local 401; and
2. Give an advance ruling under s. 36(3) of PIPA, if the decision is to give an advance ruling

## III. DISCUSSION

[para 8] **Advance Ruling Provision**—Section 36(3) of PIPA provides that an organization subject to PIPA may request an advance ruling from the Commissioner or his delegate, on any matter that could be the subject of an investigation by the Commissioner. Such matters may include the collection, use and disclosure of personal information by the organization.

[para 9] In January 2005, the OIPC issued a set of guidelines to assist organizations considering seeking an advance ruling (“Guidelines”) under PIPA.

[para 10] These Guidelines state that advance rulings may be granted only with respect to a specific matter and the facts of that matter must be set out in the request. Advance rulings apply only to the requesting organization and are not meant to be legal precedents for others to rely on.

[para 11] The Guidelines also specify that a request for an advance ruling will be refused if: (bold in original)

- **In particular, a request for an advance ruling will be refused if:**
  - a) the advance ruling may impair the rights of other persons under PIPA, or**
  - b) the advance ruling requires an interpretation of the provisions of PIPA, rather than the application of the provisions of PIPA to specific facts.**

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<sup>1</sup> AYSA’s letter to the Commissioner asks whether in the circumstances of this case it “should release the personal information” at issue. Strictly speaking whether an organization should release information is a discretionary matter for it to determine given the circumstances of a particular case. Advance rulings are designed to guide a party who seeks a course of action but is unsure whether it complies with PIPA. Therefore, a request for an advanced ruling is properly framed by asking whether an action the organization proposes to take complies with the legislation. For the purposes of this decision I will treat AYSA’s request as an advanced ruling on whether the proposed release of the personal information at issue complies with PIPA.

Without limiting the Commissioner, some other circumstances in which the Commissioner may refuse a request for an advance ruling include when:

- the request contains a matter of jurisdiction or legal forum
- the matter involves a new legal issue
- the request would require extensive factual inquiries
- it is not possible to determine all of the material facts
- the request involves a matter before the courts
- the request involves proposed or draft legislation
- the request involves a matter that is frivolous or vexatious
- the requester wants an advance ruling based on several proposed alternative courses of action or transactions
- the same matter and the same parties are already before OIPC
- the advance ruling is not timely, or may be moot when issued
- the nature of the request is repetitious or systematic
- the request may unreasonably interfere with the operations

[para 12] Neither party's submissions referred to the Guidelines nor how they might apply to the facts of this case.

#### **IV. ANALYSIS**

[para 13] The essence of the Guidelines is that an advanced ruling should be reserved for matters where the law under PIPA is settled, the facts of the case clear and the matter is confined to the applicant party only. Extenuating circumstances, such as related legal actions or jurisdictional questions surrounding an issue do not predispose a matter to an advanced ruling.

[para 14] Having considered all the circumstances in this case, including the Guidelines just described, I am of the view this is not an appropriate case in which to issue an advance ruling.

[para 15] First, the impact of any advance ruling could extend beyond AYSA, the organization seeking this ruling. Clearly, the Union's rights as well as those of individual employees could be adversely affected by an advance ruling. On one hand, a ruling could affect the Union's ability to obtain contact information. On the other hand, an advance ruling could result in the disclosure of the personal information of employees without their consent. The Guidelines are clear that an advanced ruling will not be issued under these circumstances.

[para 16] Second, there is a dispute in this case as to whether the OIPC is the right forum to hear this matter. The Union says the employee contact information issue is part of a larger labour relations matter connected to its obligation to communicate with and represent its members. It contends the Labour Board is the proper tribunal to determine this matter. For its part, AYSA

contends the issues here are within the jurisdiction and expertise of the OIPC. As the Guidelines note, it is not appropriate to consider an advance ruling where the proper forum for the matter in issue is disputed.

[para 17] Third, neither party cited any OIPC cases on the issue of disclosure of employee contact information in a labour relations context. Therefore, I find that the matter advanced by AYSA presents a new legal issue at least as it concerns OIPC jurisprudence. The parties did refer me to a Labour Board decision, *Economic Development Edmonton (Re)*.<sup>2</sup> To the extent this case is relevant, I note that it only concerned the disclosure of employee names and telephone numbers. The present case also involves a request by the Union for the email addresses of all employees. While I decline to make any finding as to whether employee emails should be treated differently than names and telephone numbers, this factual distinction does at least raise a new legal issue. As the Guidelines state, a matter which raises a new legal issue does not dispose itself to an advance ruling.

[para 18] Fourth, the Guidelines stipulate that any advance ruling must relate to a specific set of facts. Implicit in this, in my view is that these facts are both clear and settled. Neither is the case here as the parties dispute the facts that are the subject of the advance ruling. Moreover, it is not possible for me to determine the material facts based on the parties' submissions and doing so would require extensive further inquiries. These are further strong reasons against issuing an advance ruling in this case.

[para 19] Finally, I note the parties are involved in other legal proceedings relating to the Union's certification. I have not been advised of the status of these proceedings, but it could well be that their outcome could or will render whatever judgement I were to make here moot. The Guidelines refer to this factor as yet another basis upon which the OIPC will decline to issue an advance ruling.

## V. CONCLUSION

[para 20] For all of the reasons cited above, I reject AYSA's request for an advanced ruling in this matter.



Elizabeth Denham  
Information and Privacy Commissioner  
for British Columbia

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<sup>2</sup> [2002] A.L.R.B.D. No. 97.