

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER P2005-002

October 4, 2006

DOCTOR DAVE COMPUTER REMEDIES INCORPORATED

Review Number P0114

Office URL: <http://www.oipc.ab.ca>

Summary: The Information and Privacy Commissioner found that Doctor Dave Computer Remedies Incorporated (the “Organization”) used and disclosed the Complainant’s *personal information* contrary to the *Personal Information Protection Act*, R.S.A. 2003, c. P-6 (the “Act”). The Commissioner’s Order considers the application of numerous provisions of the Act, such as sections 1(a) and 4(3) (*business contact information*); sections 1(j), 15, 18 and 21 (*personal employee information*); sections 14, 17 and 20 (*personal information*); sections 7, 8 and 9 (consent) and sections 11, 16 and 19 (limitations on collection, use and disclosure).

Statutes Cited: *Personal Information Protection Act*, R.S.A. 2003, c. P-6.5, ss. 1(a), 1(e), 1(j), (k), 2, 3, 4(3)(d), 4(4), 6, 7, 8, 9, 11, 14, 15, 16, 17, 18, 19, 20, 21, 46(2), 49, 50, 51 and 52. Alberta Regulation 366/2003; *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000 c.F-25, s. 1(n).

Authorities Cited: AB: Order P2005-001.

Case Cited: *Castillo v. Castillo*, 2005 SCC 83.

Reference material cited: *Sullivan and Driedger on the Construction of Statutes*, 4th Edition (Markham, Ontario: Butterworths Canada Ltd., 2002).

I. BACKGROUND

[para 1] An individual (the “Complainant”), who alleged that he was a former employee of Doctor Dave Computer Remedies Incorporated, (the “Organization”), initiated a complaint with my office under section 46(2) of the *Personal Information Protection Act*, R.S.A. 2003, c. P-6.5 (the “Act”).

[para 2] The Complainant complained about the post-employment collection, use and disclosure of his *personal information* by the Organization. The information collected includes his name, home and email address, and home phone number. The complaint about use concerns the Organization’s use of the Complainant’s *personal information* to encourage its current employees to initiate legal action against the Complainant and to make unwanted contact with the Complainant. The complaint about disclosures concerns disclosures to websites, employees of the Organization and to third parties. In support of his complaint, the Complainant provided documentary and electronic evidence consisting of copied emails, letters and photographs.

[para 3] Mediation, authorized under section 49 of the Act, failed and the matter proceeded to a private oral inquiry under section 50 of the Act. Prior to the private oral inquiry, the Complainant accepted that he had the initial burden of proof to establish that the Organization collected, used and disclosed his *personal information* in contravention of the Act. The Organization chose not to attend the inquiry and prior to the inquiry tendered a one-page submission, without evidence, arguing that the Complainant was an independent contractor and that the Act does not apply in these circumstances. The Organization was consistently uncooperative at all stages leading to these proceedings.

[para 4] In Order P2005-001, I addressed a very similar fact situation. The Organization in this inquiry and the Organization in Order P2005-001 are the same. The Complainant in this inquiry, like the Complainants in Order P2005-001, alleged that he is a former employee of the Organization and complained of similar collection, use and disclosure of his personal information as the Complainants did in Order P2005-001. I note that as the fact situation, complaint and submissions of the Complainant closely match those of the circumstances, complaints and submissions made for the Order P2005-001 inquiry, my analysis, where appropriate, will reference that Order.

II. ISSUES

[para 5] The issues in this inquiry are:

1. Is there evidence to support the Complainant’s particular allegations that the Organization sent the Complainant’s email address and other personal information to

websites? The technical issues are whether email sent by a person may be traced to the person through an Internet Service Provider's address.

2. Did an "individual" initiate the complaint, as required by section 46(2) of the Act?
3. Does the complaint involve "business contact information" as defined by section 1(a) of the Act? If yes, did the Organization collect, use or disclose "business contact information", as provided by section 4(3)(d) of the Act?
4. Does the complaint involve "personal employee information", as defined by section 1(j) of the Act? If yes, did the Organization collect, use or disclose "personal employee information", as provided by section 15, section 18 and section 21 of the Act?
5. Does the complaint involve "personal information", as defined by section 1(k) of the Act?
6. If the complaint involves "personal information", did the Organization have the authority to collect, use or disclose "personal information" without consent as provided by section 14, section 17 and section 20 of the Act?
7. If the Organization did not have the authority to collect, use or disclose personal information without consent, did the Organization have the Complainant's consent to collect, use or disclose the personal information, as provided by section 7, section 8 and section 9 of the Act?
8. Did the Organization comply with the limitations on collection, use and disclosure of personal information, as set out in section 11, section 16 and section 19 of the Act?

III. DISCUSSION OF THE ISSUES

Preliminary issue: Burden of proof

[para 9] Prior to my review of the stated issues, I addressed the question of burden of proof. Section 51 of the Act is the only section that addresses the burden of proof. However, section 51 of the Act applies to a review of a decision regarding the denial of access to *personal information* or to refuse information respecting the collection, use or disclosure of *personal information* about an individual. Section 51 of the Act reads:

51 At an inquiry into a decision under which an individual was refused
(a) access to all or part of the personal information about the individual or a record relating to the information, or
(b) information respecting the collection, use or disclosure of personal information about the individual, it is up to the organization to establish to the satisfaction of the Commissioner that the individual has no right of access to the

personal information about the individual or no right to the information requested respecting the collection, use or disclosure of the personal information about the individual.

[para 10] The Act is silent as to where the burden of proof rests for an inquiry into a complaint about the collection, use and disclosure of *personal information*.

[para 11] As a preliminary issue to this inquiry, I asked the Organization and the Complainant to provide me with written arguments as to whether or not the Complainant or the Organization has the initial burden of proof. The Organization did not respond. However, the Complainant accepted that, as he is initiating the complaint and alleging that the Organization collected, used or disclosed his *personal information* contrary to the Act, he has the initial burden of proof. The Complainant accepted the general principle that the party raising the issue has the burden of proving it.

[para 12] I agreed with the Complainant accepting the initial burden of proof in this inquiry regarding the collection, use and disclosure of his *personal information* in contravention of the Act.

[para 13] The Organization, after making a one-page letter submission prior to the private oral inquiry, chose not to participate in the inquiry, thereby opting not to make additional submissions, respond to the submissions of the Complainant, ask questions or respond to questions that may have arisen during the inquiry.

[para 14] I note that my Office made an exceptional number of attempts to contact the Organization by telephone, mail, email and personal service on the registered office, which turned out to be a mail drop address registered with Corporate Registry as the registered office. The multiple attempts at contact with the Organization are documented and supported by affidavit evidence, which my Office provided to the parties. The Organization, for the most part, chose to ignore this proceeding.

ISSUE #1: Is there evidence to support the Complainant's particular allegations that the Organization sent the Complainant's email address and other personal information to websites? The technical issues are whether email sent by a person may be traced to the person through an Internet Service Provider's address.

[para 15] I listened to the arguments of the Complainant, based on his background with computers and experience working for the Organization, in support of the assertion that the disclosure of his name, email address, home address and telephone number can be logically, electronically and reasonably traced to the Organization. The Complainant testified that the Organization certainly has the capability of being the source and is capable of being electronically traced.

[para 16] I dealt with this same type of technical question in Order P2005-001. Assessing similar evidence before me in this case, I find that it is reasonable to conclude that the Organization is the source that disclosed the name, email address, mailing

address and phone number of the Complainant and was responsible for posting the information to websites.

ISSUE #2: Did an “individual” initiate the complaint, as required by section 46(2) of the Act?

[para 17] Section 46(2) of the Act reads:

46(2) An individual may initiate a complaint with respect to the issues referred to in section 36(2).

[para 18] The Organization argued, in its one-page submission, that the Complainant was not an individual within the Act but is really a corporation and as such he cannot initiate a complaint. The Organization failed to provide me with any evidence supporting the submission. The Complainant argued and provided documentary evidence that he is a former employee of the Organization and not a corporate entity. In support of his testimony regarding his individual and employment status, the Complainant provided documentary evidence filed with the Canada Revenue Agency.

[para 19] As I did in Order P2005-001, I find that the Complainant may be identified as an individual who was employed by the Organization. There is no evidence to lead me to believe that the Complainant was acting, when employed by the Organization, in any capacity other than as an individual under the Act. I therefore find that the Complainant is an individual who initiated a complaint within the meaning of section 46(2) of the Act.

ISSUE #3: Does the complaint involve “business contact information” as defined by section 1(a) of the Act? If yes, did the Organization collect, use or disclose “business contact information”, as provided by section 4(3)(d) of the Act?

[para 20] *Business contact information* is defined in section 1(a) of the Act and the exception to the definition of *business contact information* is found in section 4(3)(d) of the Act. Sections 1(a) and 4(3)(d) of the Act read:

1 In this Act,
(a) “business contact information” means an individual’s name, position name or title, business telephone number, business address, business e-mail, business fax number and other similar business information;...

4(3) This Act does not apply to the following:...
(d) the collection, use or disclosure of business contact information if the collection, use or disclosure, as the case may be, is for the purposes of contacting an individual in that individual’s capacity as an employee or an official of an organization and for no other purpose;...

[para 21] The Organization, in its one-page submission argued, without supporting evidence, that the Complainant’s email address, phone number or home address is primarily *business contact information* and therefore section 4(3) of the Act places the Complainant’s *business contact information* outside of the jurisdiction of the Act. This means that I would therefore have no jurisdiction to review complaints about *business contact information*.

[para 22] The Complainant testified that the information collected, used and disclosed by the Organization is not his *business contact information*. The Complainant argued that, when he was employed by the Organization, the information may have been *business contact information* but since he left the employ of the Organization, his employment circumstances have changed resulting in the information being no longer capable of being described as *business contact information*.

[para 23] I find that the information does not fall within section 4(3)(d) of the Act for the following reasons. First I do not think it can be said that the collection was for the purposes of contacting the Complainant in the Complainant’s capacity as an employee of the Organization and for no other purpose. An employer’s collection of an employee’s *personal information* is for many purposes, and is not confined to contacting the employee. Second, at the time the information was used and disclosed, the Complainant was no longer an employee. Therefore, it cannot be said that the use and disclosure was for the purpose of contacting the Complainant as an employee of the Organization. I therefore find that sections 1(a) and 4(3)(d) of the Act do not apply.

Issue #4: Does the complaint involve “personal employee information”, as defined by section 1(j) of the Act? If yes, did the Organization collect, use or disclose “personal employee information”, as provided by section 15, section 18 and section 21 of the Act?

[para 24] The discussion under this issue will refer to the definitions of “employee”, *personal employee information* and *personal information*, defined in the Act as follows:

1 In this Act,

...

(e) “employee” means an individual employed by an organization and includes an individual who performs a service for or in relation to or in connection with an organization

(i) as an apprentice, volunteer, participant or student, or

(ii) under a contract or an agency relationship with the organization;...

...

(j) “personal employee information” means, in respect of an individual who is an employee or a potential employee, personal information reasonably required by an organization that is collected, used or disclosed solely for the purposes of establishing, managing or terminating

(i) an employment relationship, or

(ii) a volunteer work relationship

between the organization and the individual, but does not include personal information about the individual that is unrelated to that relationship;...

(k) “personal information” means information about an identifiable individual;...

[para 25] In this discussion, I will be considering the complaint that concerns the Complainant’s name, email address, home address and home phone number. That particular information is *personal information* as defined by section 1(k), since it is information about an identifiable individual.

[para 26] I have already found that the Complainant was an “employee” of the Organization. The evidence is that the Complainant was an employee of the Organization from February 2004 to May 2004.

[para 27] I now turn to the matter of *personal employee information*, which is defined in section 1(j) of the Act.

[para 28] Section 1(j) of the Act says that, in respect of a person who is an employee or a potential employee, *personal information* is *personal employee information* if the following requirements are met:

- the *personal information* is collected, used or disclosed solely for the purposes of establishing, managing or terminating an employment relationship or a volunteer work relationship between the organization and the individual (section 3 of the Regulation under the Act says that “managing” includes “administering”).
- the *personal information* is reasonably required by an organization.

[para 29] The last part of section 1(j) of the Act also says that *personal employee information* does not include *personal information* that is unrelated to the employment or volunteer work relationship. Thus, under this definition, only *personal information* that is related to the employee or volunteer work relationship is *personal employee information*.

[para 30] The issue is whether the information which is the subject of the complaint meets the requirements for *personal employee information*, as contained in the definition in section 1(j) and also under sections 15, 18 and 21 of the Act, which are the provisions dealing with, respectively, the collection, use and disclosure of *personal employee information*.

Collection of personal employee information

[para 31] The definition of *personal employee information* in section 1(j) of the Act specifically refers to “an individual who is an employee or a potential employee”. It does not refer to a former employee of an organization. I note that the Organization did not

provide arguments concerning the collection of *personal employee information* or *personal information* in these circumstances.

[para 32] The words “establishing, managing or terminating” an employment or volunteer work relationship in section 1(j) makes it clear that section 1(j) only applies to present employees and to the recruitment of employees. Based on the evidence before me I find that the information collected is not *personal employee information*. I can only speculate that the information collected at the time of recruitment and employment by the Organization may have been *personal employee information* under section 1(j) of the Act, but that is all. However, the oral testimony and written evidence provided by the Complainant concerning the information at issue does allow me to find that the information collected is the *personal information* of the Complainant as defined by section 1(k) of the Act.

[para 33] Section 15 of the Act provides for the collection of *personal employee information*. I have found that the information at issue is *personal information* as defined by section 1(j) of the Act and not *personal employee information*. Section 15 of the Act is restricted to the collection of *personal employee information* and therefore I will not address the application of section 15 of the Act any further. I will consider the collection of the Complainant’s *personal information* under other provisions of the Act that deal with the collection of *personal information* as opposed to *personal employee information*.

Use of personal employee information

[para 34] The definition of *personal employee information* in section 1(j) of the Act specifically refers to “an individual who is an employee or a potential employee”. It does not refer to former employees of an organization. The evidence is that the Complainant was no longer employed by the Organization at the time that the Organization used the Complainant’s *personal information*.

[para 35] Section 18 of the Act provides for the use of *personal employee information*. The relevant part of section 18 reads:

- 18(1) Notwithstanding anything in this Act other than subsection (2), an organization may use personal employee information about an individual without the consent of the individual if
- (a) the individual is an employee of the organization, or
 - (b) the use of the information is for the purpose of recruiting a potential employee.

[para 36] Like section 1(j) of the Act, section 18(1) of the Act refers only to present employees and to the recruitment of employees. Section 18(1) of the Act does not refer to former employees of an organization. Section 18 of the Act directs how *personal employee information* may be used without the consent of an individual. The Complainant is now a former employee of the Organization and the issues concern the Organization’s post-employment use of the information about the Complainant. I therefore find that as section 18 of the Act does not address former employees and as the

information at issue concerns post-employment use of *personal information*, section 18 of the Act does not apply. As a result I will consider the use of the Complainants' *personal information* under other provisions of the Act that deal with use of *personal information* as opposed to *personal employee information*.

Disclosure of personal employee information

[para 37] Unlike section 18 of the Act (respecting “use” of *personal employee information*), section 21(1)(a) of the Act refers to *personal employee information* and includes an individual who “was an employee”. I understand those words to include former employees. The relevant part of section 21 reads:

21(1) Notwithstanding anything in this Act other than subsection (2), an organization may disclose personal employee information about an individual without the consent of the individual if

- (a) the individual is or was an employee of the organization, or
- (b) the disclosure of the information is for the purpose of recruiting a potential employee.

[para 38] So section 1(j) of the Act says it is not *personal employee information* if an individual is no longer an employee. Yet section 21 of the Act refers to the disclosure of *personal employee information* of individuals who “were” employees. How do I resolve this discrepancy?

[para 39] As I stated in Order P2005-001, interpreting section 21 of the Act requires that I consider the “modern principle” of statutory interpretation, as enunciated in the most recent edition of *Sullivan and Driedger on the Construction of Statutes*, 4th Edition (Markham, Ontario: Butterworths Canada Ltd., 2002) at page 1:

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament.

[para 40] This approach to statutory interpretation has been repeatedly affirmed in numerous decisions of the Supreme Court of Canada, one of the more recent being *Castillo v. Castillo*, 2005 SCC 83.

[para 41] The words of section 21(1) of are clear in referring to former employees.

[para 42] The scheme of the Act is that *personal information* of former employees is addressed only in the provision for disclosure of *personal employee information* under section 21 of the Act. *Personal information* of former employees is not addressed in section 1(j) or in the provisions for collection and use of *personal employee information* under sections 15 and 18, respectively.

[para 43] As I said in Order P2005-001, I believe that the Legislature’s intent was that collection and use of the *personal information* of former employees would no longer be solely for the purposes of establishing, managing or terminating the employment or

volunteer work relationship, as required by section 1(j) of the Act. Therefore, those provisions do not apply to former employees. However, I believe that the Legislature envisioned situations that would require disclosure of *personal employee information* of former employees, such as to pay pensions or to provide other post-employment benefits, or for tax reasons, as examples. Therefore, the Legislature decided to dispose with rules respecting the collection and use of employee information after someone ceases to be an employee, but kept the disclosure of employee information of former employees under section 21 of the Act, provided that an organization met the requirements for disclosure of *personal employee information* under section 21(2).

[para 44] Since the Complainant is a former employee of the Organization, as provided by section 21(1)(a) of the Act, I find that section 21 is applicable to the Organization's disclosure of the Complainant's *personal information*. I must now consider whether the Organization met the requirements under section 21(2) which would allow it to disclose this information.

[para 45] Section 21(2) reads:

21(2) An organization shall not disclose personal information about an individual under subsection (1) without the consent of the individual unless

- (a) the disclosure is reasonable for the purposes for which the information is being disclosed,
- (b) the information consists only of information that is related to the employment or volunteer work relationship of the individual, and
- (c) in the case of an individual who is an employee of the organization, the organization has, before disclosing the information, provided the individual with reasonable notification that the information is going to be disclosed and of the purposes for which the information is going to be disclosed.

[para 46] Section 21(2) of the Act contains three requirements. The "and" at the end of section 21(2)(b) means that all the requirements of section 21(2) of the Act must be met, where applicable. If those requirements are met, an organization may disclose *personal employee information* without the consent of the individual.

[para 47] Reading the words of section 21(2) of the Act in their entire context, I find that "purposes" for disclosure referred to in section 21(2)(a) and (c) must be interpreted as purposes related to the employment or volunteer work relationship, as set out in section 21(2)(b).

[para 48] As I said in Order P2005-001, interpreting section 21(2)(a) of the Act as allowing disclosure for purposes unrelated to the employment or volunteer work would defeat the purpose of the Act. In this case, for example, the purposes for disclosure were to encourage third parties and employees of the Organization to make unwanted contact with the Complainant, and to promote the taking of legal action against the Complainant. These purposes are unrelated to the employment relationship. If "purposes" are not

confined to the employment relationship, disclosure for the purpose of promoting unwanted contact with a former employee or promoting the taking of legal action against a former employee would be allowed.

[para 49] As the purposes for disclosure in this case were not related to the employment relationship, I find that the Organization did not meet the requirements of section 21(2)(a) of the Act. Therefore, the Organization cannot use section 21(2) of the Act to justify disclosure. I will consider the disclosure of the Complainant's *personal information* under the provisions of the Act that deal with disclosure of *personal information* as opposed to *personal employee information*.

ISSUE #5. Does the complaint involve “personal information”, as defined by section 1(k) of the Act?

[para 50] Yes. In Issue # 4, I found that the complaint at issue involves the Complainant's *personal information*, as defined in section 1(k) of the Act, and not the Complainant's *personal employee information*, as defined in section 1(j) of the Act.

ISSUE #6. If the complaint involves “personal information”, did the Organization have the authority to collect, use or disclose “personal information” without consent as provided by section 14, section 17 and section 20 of the Act?

Collection of personal information without consent

[para 51] The collection of personal information concerns the collection of the Complainant's home phone number, name, home and email address. Section 14 of the Act reads:

14 An organization may collect personal information about an individual without the consent of that individual but only if one or more of the following are applicable:
(a) a reasonable person would consider that the collection of the information is clearly in the interests of the individual and consent of the individual cannot be obtained in a timely way or the individual would not reasonably be expected to withhold consent;...

[para 52] Section 14 of the Act goes on to list when an organization may, without consent, collect an individual's *personal information*. The Organization did not argue or provide evidence that any of these apply to these circumstances. I find that the Organization did not have the authority to collect the Complainant's *personal information*, as provided by section 14 of the Act. Therefore, the Organization cannot use section 14 of the Act to justify the use.

Use of personal information without consent

[para 53] The use of *personal information* concerns the use of the Complainant's home phone number, name, home and email address to encourage third parties and employees of the Organization to make unwanted contact with the Complainant and to advocate the taking of legal action against the Complainant. The Complainants testified that he did not consent to this use.

[para 54] Section 17 of the Act addresses the use of *personal information* of an individual, without consent. The relevant part of section 17 reads:

17 An organization may use personal information about an individual without the consent of the individual but only if one or more of the following are applicable:...

[para 55] Section 17 of the Act goes on to list when an organization may, without consent, use an individual's *personal information*. The Organization did not argue or provide evidence that any of these apply to these circumstances. I find that the Organization did not have the authority to use the Complainant's *personal information*, as provided by section 17 of the Act. Therefore, the Organization cannot use section 17 of the Act to justify the use.

Disclosure of personal information without consent

[para 56] The disclosure of *personal information* concerns the disclosure of the Complainant's home phone number, name, home and email addresses to third parties and employees of the Organization.

[para 57] The emails, testimony and documents provided by the Complainant show that the Organization disclosed his *personal information* to employees of the Organization and to third parties. The Complainant, through his testimony, provided evidence that he did not provide the Organization with any consent to disclose his *personal information* as described. The Organization gave no evidence that there was consent.

[para 58] Section 20 of the Act addresses the disclosure of *personal information* of an individual without consent. The relevant part of section 20 of the Act reads:

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:...

[para 59] Section 20 of the Act goes on to list when an organization may disclose an individual's *personal information* without consent. The Organization did not argue or provide evidence that section 20 of the Act applies to these circumstances.

[para 60] I find that the Organization did not have the authority to disclose the Complainant's *personal information*, as provided by section 20 of the Act. Therefore, the Organization cannot use section 20 of the Act to justify the disclosure.

Issue #7. If the Organization did not have the authority to collect, use or disclose personal information without consent, did the Organization have the Complainant's consent to collect, use or disclose the personal information, as provided by section 7, section 8 and section 9 of the Act?

Collection of personal information

[para 61] Section 7(1)(a) of the Act addresses the collection of *personal information* and requires consent. Section 7(1)(a) of the Act reads:

7(1) Except where this Act provides otherwise, an organization shall not, with respect to personal information about an individual,
(a) collect that information unless the individual consents to the collection of that information,...

[para 62] There is no evidence before me that would allow me to find that the Complainant consented to the collection of his *personal information* in accordance with section 7(1)(a) of the Act. Therefore, I will now consider the application of section 8(2) of the Act that allows for deemed consent for the collection of *personal information* by an organization.

Deemed consent to collect personal information

[para 63] Section 8(2) of the Act reads:

8(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.

[para 64] I accept the evidence that there existed an employee and employer relationship between the Complainant and the Organization. Therefore, I find that for employment purposes the Complainant, as would most individuals working for an

organization, voluntarily provided his *personal information* to the Organization. I also find that it is reasonable that the Complainant would voluntarily provide the *personal information* in those circumstances. Therefore, I find that section 8(2) of the Act authorized the Organization to collect the Complainant's *personal information*, without consent.

Use and disclosure of personal information with consent: Section 7.

[para 65] Section 7(1)(c) and section 7(1)(d) of the Act address use and disclosure use of *personal information*, respectively. Those provisions read:

7(1) Except where this Act provides otherwise, an organization shall not, with respect to personal information about an individual,...

(c) use that information unless the individual consents to the use of that information, or

(d) disclose that information unless the individual consents to the disclosure of that information.

[para 66] I accept the evidence of the Complainant that he did not consent to the use and disclosure of his *personal information*. Therefore I find that the Organization breached section 7 of the Act by using and disclosing the Complainants' *personal information*, without consent. I will now consider whether there was some form of deemed consent or notice as provided by section 8 of the Act.

Can it be said that there was some form of deemed consent or notice for use and disclosure?: Section 8.

[para 67] There is no evidence that the provision for deemed consent under section 8(2) of the Act applies, and there is no evidence that the Organization complied with the provision for notice under section 8(3) of the Act. Therefore, I find that section 8 of the Act did not authorize the Organization to use or disclose the Complainant's *personal information*, without consent.

Withdrawal or variation of consent: Section 9.

[para 68] Section 9 of the Act addresses withdrawal or variation of consent. I have found that the Organization was authorized to collect the Complainant's *personal information* without consent. There is no issue before me about any further collection. I have also found that the Organization did not have the Complainant's consent to use or disclose his *personal information*. Therefore, there is no need to consider the Complainant's withdrawal of consent under section 9 of the Act.

Issue #8. Did the Organization comply with the limitations on collection, use and disclosure of personal information, as set out in section 11, section 16 and section 19 of the Act?

Limitations on collection

[para 69] Section 11 of the Act reads:

11(1) An organization may collect personal information only for purposes that are reasonable.

(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.

[para 70] Section 11 of the Act allows an organization to collect *personal information* only for “reasonable” purposes. The “reasonable” requirement also governs the extent that an organization may collect *personal information* for meeting the purposes for which the *personal information* is collected.

[para 71] The standard as to what is “reasonable” is set out in section 2 of the Act, which reads:

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 72] When deciding under section 11(1) of the Act whether an organization had a “reasonable” purpose for collecting *personal information*, the standard is what a reasonable person would consider appropriate in the circumstances. Similarly, when deciding under section 11(2) of the Act whether an organization collected *personal information* only to the extent that is “reasonable” for meeting the purposes for which the information is collected, the standard is also what a reasonable person would consider appropriate in the circumstances.

[para 73] I find that the collection of the Complainant’s name, address, phone number and email address for the employment of the Complainant is a reasonable purpose. I also find that the extent of the collection of the *personal information* of the Complainant was reasonable for fulfilling the purpose of employment. I therefore find that the Organization collected the *personal information* of the Complainant in compliance with section 11 of the Act.

Limitations on use

[para 74] Section 16 of the Act reads:

16(1) An organization may use personal information only for purposes that are reasonable.

(2) Where an organization uses personal information, it may do so only to the extent that is reasonable for meeting the purposes for which the information is used.

[para 75] Section 16 of the Act allows an organization to use *personal information* only for “reasonable” purposes. The “reasonable” requirement also governs the extent that an organization may use *personal information* for meeting the purposes for which the *personal information* is used.

[para 76] When deciding under section 16(1) of the Act whether an organization had a “reasonable” purpose for using *personal information*, the standard is what a reasonable person would consider appropriate in the circumstances, as provided by section 2 of the Act. Similarly, when deciding under section 16(2) whether an organization used *personal information* only to the extent that is “reasonable” for meeting the purposes for which the information is used, the standard is also what a reasonable person would consider appropriate in the circumstances.

[para 77] I have found that the Organization’s purpose for using the *personal information* of the Complainant was to encourage third parties and employees of the Organization to make unwanted contact with the Complainant, and to promote the taking of legal action against the Complainant. In these circumstances, a reasonable person would consider that use to be inappropriate. Therefore, I find that the Organization’s purpose for using the *personal information* of the Complainant was not reasonable, as provided by section 16(1) of the Act. Having made this finding, I also find that a reasonable person would consider that the extent of the use was inappropriate. Therefore, I further find that the extent of the use was not reasonable, as provided by section 16(2) of the Act.

[para 78] Consequently, I find that the Organization did not comply with the limitations on use of the Complainant’s *personal information*, as set out in section 16 of the Act. Therefore, the Organization’s use of the Complainant’s *personal information* was in breach of section 16 of the Act.

Limitations on disclosure

[para 79] Section 19 of the Act deals with disclosure of *personal information* and contains the same wording as section 16 of the Act. For the same reasons that I found the use of the *personal information* by the Organization to be unreasonable, I find that the Organization’s purpose for disclosing the Complainant’s *personal information* and the extent of the disclosure were not reasonable. Therefore, the Organization’s disclosure of the Complainant’s *personal information* was in breach of section 19 of the Act.

IV. ORDER

[para 80] I make the following Order under section 52 of the Act.

[para 81] I find, by way of preliminary issue, that the Complainant had the initial burden of proof for a complaint about the collection, use and disclosure of *personal information* contrary to the Act.

[para 82] I find that there was evidence to support the allegations of the Complainant that the Organization sent his email address and other *personal information* to websites.

[para 83] I find that the Complainant is an individual who initiated a complaint as required by section 46(2) of the Act.

[para 84] I find that the complaint does not involve *business contact information* as defined in section 1(a) of the Act.

[para 85] I find that the complaint does not involve *personal employee information* as defined in section 1(j) of the Act. Although the disclosure of the Complainant's personal information falls within section 21 of the Act, the disclosure does not meet the requirements of section 21(2) of the Act.

[para 86] I find that the complaint involves *personal information* as defined by section 1(k) of the Act.

[para 87] I find that the Organization did not have the authority to collect, use or disclose the *personal information* of the Complainant under sections 14, 17 and 20 of the Act, respectively.

[para 88] I find that the Organization had the deemed consent of the Complainant to collect his *personal information* as provided by section 8(2) of the Act. I find that the Organization did not have the consent of the Complainant to use or disclose his *personal information*, as provided by sections 7 and 8 of the Act. Therefore, the Organization breached section 7 of the Act by using and disclosing the Complainant's *personal information* without consent.

[para 89] I find that the Organization did comply with the limitations on collection of the *personal information* as set out in section 11 of the Act, but did not comply with the limitations on use and disclosure of the Complainant's *personal information*, as set out in section 16 and section 19 of the Act, respectively. Therefore, I find that the Organization's use and disclosure of the Complainant's *personal information* was in breach of sections 16 and 19 of the Act, respectively.

[para 91] As a result of my finding that the Organization has been in contravention of the Act, I hereby order that the Organization immediately cease using and disclosing the *personal information* of the Complainant.

Frank Work, Q.C.
Information and Privacy Commissioner