

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER P2009-012

June 14, 2010

INSIGHT PSYCHOLOGICAL INC.

Case File Number P1128

Office URL: www.oipc.ab.ca

Summary:

An individual complained that her personal information was used or disclosed in contravention of the *Personal Information Protection Act* (“the Act”) when the Corporate and Human Resources Manager of Insight Psychological Inc. (“Insight”) sent a memo containing information about her to all Insight staff and contract psychologists.

The Adjudicator found that the second paragraph of the memo was the Complainant’s personal information as it was information about an identifiable individual. As this information related to the employment relationship between the Complainant and Insight, this information was personal employee information within the terms of section 1(j) of the Act.

The Adjudicator found that the information regarding the Complainant no longer being employed by Insight was properly disclosed by Insight as it was for the purpose of managing and terminating an employment relationship. However, the Adjudicator found that the disclosure of the information in the second paragraph of the memo, and the fact that the Complainant gained employment elsewhere, was not reasonable and had been disclosed in contravention of the Act.

Statutes Cited: **AB:** *Personal Information Protection Act* S.A. 2003, c. P-6.5 ss. 1(j), 1(k), 7(1), 8, 19, 20, 21, 52.

Authorities Cited: AB: Orders P2006-006, P2006-007, P2007-005, P2009-011; **BC** Orders P06-03, P06-06.

I. BACKGROUND

[para 1] The Complainant was employed by Insight as an Operations Manager for approximately a year. According to Insight this short employment relationship was a difficult one. The Complainant claims she was unaware of any difficulties Insight had with her as an employee. In any event, according to Insight's submissions, on September 29, 2008, the Complainant came to work for half a day, handed her keys to a co-worker, and indicated to that co-worker that she was quitting and taking employment elsewhere. The Complainant did not give Insight formal notice prior to her departure that she was leaving her employment with Insight.

[para 2] A memorandum was prepared by the Executive Director of Insight ("the Executive Director") and Insight's Corporate and Human Resource Manager ("the CHR Manager") ("the memo"). On September 30, 2008, the memo was sent by the CHR Manager to all Insight staff. The memo stated that the Complainant was no longer an employee of Insight and had found new employment elsewhere. It also stated who would be responsible for the Complainant's former duties until a replacement could be hired. Although Insight argues otherwise, which I will discuss below, the second and third paragraphs of the memo also contained opinions about the Complainant.

[para 3] On October 12, 2008, the Complainant wrote to the Office of the Information and Privacy Commissioner ("this Office"), enclosing a copy of the memo and arguing that section 21 of the Act had been breached. An investigation was conducted by this Office and the results were shared with the parties. On March 13, 2009, the Complainant requested an inquiry into this matter.

[para 4] Both parties have provided initial and rebuttal submissions, which I have reviewed.

II. RECORDS AT ISSUE

[para 5] This complaint concerns a memo that was sent to all Insight employees and contract psychologists by the CHR Manager on September 30, 2008.

III. ISSUES

[para 6] The Notice of Inquiry dated September 22, 2009 set out 5 issues. The fourth issue was subsequently amended. Therefore, the issues in this inquiry are:

Issue A:

Did the Organization use/disclose “personal information” of the Complainant as defined in PIPA section 1(k)?

Issue B:

Did the Organization use/disclose the “personal information” in contravention of, or in compliance with, section 7(1) of PIPA? In particular,

1. Did the Organization have the authority to use/disclose the Complainant’s personal information without consent, as permitted by section 17 & 20 of PIPA?
2. Did the Organization have the authority to use/disclose the information without consent, because the information was the Complainant’s “personal employee information” as that term is defined in PIPA section 1(j), and the terms of sections 18 & 21 were met?

Issue C:

If the Organization did not have the authority to use/disclose the information without consent, did the Organization obtain the Complainant’s consent in accordance with section 8 of the Act before using/disclosing the information?

Issue D:

If the Organization had the authority to use/disclose the personal information under section 17 & 20 or under sections 18 & 21, did it use/disclose the information contrary to, or in accordance with, sections 16(1)/19(1) of PIPA (use/disclose for purposes that are reasonable)?

Issue E:

If the Organization had the authority to use/disclose the personal information under sections 17 & 20 but not under sections 18 & 21, did it use/disclose the information contrary to, or in accordance with sections 16(2) & 19(2) of PIPA (use/disclosure to the extent reasonable for meeting the purposes)?

[para 7] The issues as stated in the Notice of Inquiry raise the question of unauthorized use as well as of unauthorized disclosure of the Complainant’s information. Some of the Complainant’s personal information described in the memo may have been used by Insight in that it would have been collected and used for Insight to manage the employment relationship. However, the primary issue in this matter is the disclosure of

the Complainant's personal information to Insight's staff and psychologists. Therefore, I will deal with the disclosure of this information in this Order rather than with the use.

[para 8] As well, it is unclear from the material before me how the Complainant came to be in possession of this memo. It is also unclear if anyone at Insight had contact with the Complainant following her departure from Insight. These issues were raised in one form or another by both parties to this matter. However, I do not find that anything turns on these points. For the purposes of this complaint, what is important is that this memo was sent by Insight to its staff and psychologists, which is not in dispute.

IV. DISCUSSION OF ISSUES

A. Did the Organization use/disclose "personal information" of the Complainant as defined in PIPA section 1(k)?

[para 9] Section 1(k) of the Act defines personal information as follows:

1(k) "personal information" means information about an identifiable individual;

[para 10] Insight argues that the Complainant's name, the fact that the Complainant is no longer a staff member of Insight, and the fact that the Complainant found new employment, was the only personal information of the Complainant disclosed in the memo.

[para 11] Insight further argues that information about the Complainant's successor or temporary replacements is not the Complainant's personal information.

[para 12] Finally, Insight argues in its submissions that the second paragraph of the memo states three types of information:

1. It contains an expression of Insight's statement of values and expectations for its workplace by listing these values and expectations;
2. It indicates that the Complainant and Insight have had a difference of opinion about these matters; and
3. It indicates that Insight cannot justify or accommodate such differences of expectation in the workplace.

[para 13] Insight further argues:

Only the second of these types of information contains a statement relating to the Complainant. Neither the general expression that these are the values and expectations of the workplace, nor the fact that Insight cannot accommodate differences of expectation in the workplace, are the personal information of the Complainant.

[para 14] I disagree with this analysis of the second paragraph of the memo. To begin, there is no doubt in my mind that the entire second paragraph, which is only one

sentence, is about the Complainant. The phrasing of the second paragraph is such that it is reasonable to interpret it as a statement that Insight can no longer accommodate the Complainant as an employee. The wording, read in its context and in the context of the entire memo, is not a “general expression that these are the values and expectations of the workplace” nor is it a statement that, in general, “Insight cannot accommodate differences of expectation in the workplace”. This comment is describing the relationship, as Insight saw it, between the Complainant and Insight. Further, as discussed below, it clearly implies that, in the view of Insight, the Complainant fell short with respect to the values listed.

[para 15] In the affidavit of the Executive Director of Insight, he states that there were numerous problems with the Complainant during the course of her employment. The Executive Director goes on to describe problems, current and former, Insight staff and contract psychologists had with the Complainant. According to the affidavit of the Executive Director, Insight brought the complaints and problems to the Complainant’s attention during her employment, and also offered the Complainant support, advice and additional training throughout her employment. The Complainant argues that she was not made aware of any problems Insight had with her.

[para 16] The “general values” outlined in the second paragraph of the memo echo the specific problems Insight says it had with the Complainant during her employment, which are outlined in the affidavit of the Executive Director. Read in context, the second paragraph indicates that the Complainant was acting contrary to Insight’s values and expectations. I find that not only is the statement that there was a difference of opinion between the Complainant and Insight about the values and expectations for the workplace an opinion about the Complainant; the entire second paragraph of the memo is the opinion of Insight about the Complainant, and is, therefore, her personal information.

[para 17] As well, Insight states the third paragraph of the memo contains some personal information of the Complainant. Specifically, Insight concedes that the fact the Complainant had found other employment is the Complainant’s personal information. However, Insight argues that the second sentence in the third paragraph of the memo is not the Complainant’s personal information because this is not information about the Complainant. I disagree. Read in the context of the entire memo, a reasonable person would interpret the sentence as Insight’s expression of its view that the Complainant’s new employer will need luck in dealing with the Complainant. Again, this is an opinion about the Complainant and therefore, I find, it is the Complainant’s personal information.

[para 18] Based on the evidence before me and what I have discussed above, I find that the memo contains the personal information of the Complainant, including her name, employment status and opinions about her. Given this, I find that the Complainant’s personal information was disclosed by Insight when its CHR Manager e-mailed a copy of the memo to Insight’s employees and contract psychologists.

B. Did the Organization disclose the “personal information” in contravention of, or in compliance with section 7(1) of PIPA?

[para 19] Section 7(1) of the Act reads:

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

...

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

[para 20] According to this provision, before disclosing a person's personal information, the organization must either have authority on the basis of one of the exceptions in the Act, or it must have the person's consent.

1. Did the Organization have the authority to disclose the Complainant's personal information without consent, as permitted by section 20 of PIPA?

[para 21] Insight submits that the following portions of section 20 of the Act are applicable to this matter:

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:

(a) a reasonable person would consider that the disclosure 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 22] To rely on this section as authority for disclosure, the following must be shown:

- a reasonable person would consider the disclosure of the information is clearly in the interests of the Complainant (an objective test); and
- consent of the Complainant could not be obtained in a timely way; or
- the Complainant would not reasonably be expected to withhold consent (a subjective test).

[para 23] As I will explain below, Insight's disclosure that the Complainant was no longer employed at Insight was done in accordance with section 21 of the Act and therefore, I will not discuss that information as it relates to section 20 of the Act. I will examine Insight's arguments regarding section 20 of the Act relative to only two items of information in the memo that were disclosed: first the fact that the Complainant obtained

new employment, and second, Insight's opinions about the Complainant as communicated in the memo.

[para 24] Insight argues that it properly disclosed the Complainant's personal information because it was clearly in the interests of the Complainant to do so and consent could not be obtained in a timely manner or at all. Further, Insight argues that the Complainant would not reasonably have objected to the disclosure of the information.

[para 25] Regarding the fact that the Complainant had found new employment, Insight submits:

Given her sudden and unexplained departure from the organization, it was arguably in the interests of the Complainant that this departure be disclosed to her colleagues. The Memorandum communicated to her colleagues, many of whom would be concerned for her wellbeing, that she was no longer an employee of Insight, and had found employment elsewhere. This was a close-knit workplace with staff and psychologists working in a caring profession. The provision of information regarding the Complainant's situation in new employment would no doubt have allayed the fears of her former colleagues regarding her well-being.

[para 26] I cannot see how allaying the fears of her former colleagues is clearly in the interests of the Complainant within the terms of section 20 of the Act. It is not clear what interest of the Complainant would be served by this disclosure, or even that the Complainant would care whether her former colleagues would be concerned about her. Therefore, I find that a reasonable person would not consider the disclosure of the Complainant's new employment to be clearly in her interest.

[para 27] As for the disclosure of Insight's opinion about the Complainant, Insight submits:

Because it was well-known in the workplace that the Complainant and Insight held differing opinions regarding workplace expectations, it is arguable that the Complainant would not reasonably have objected to the use/disclosure of the bare fact of this disagreement in the Memorandum. It is in the interests of the Complainant that this matter be characterized as a disagreement, rather than in a more negative light. It is not reasonable for the Complainant to have failed to consent to the release of a minimal amount of information in the Memorandum in the context of this small close-knit workplace. A release of minimal information drafted in a neutral fashion was in the Complainant's interest in these circumstances.

[para 28] As explained above, I reject the characterization of what was said in second paragraph of the memo as being the "bare fact of this disagreement". This is not the only personal information that was disclosed in the second paragraph. Insight's opinion about the Complainant, that was contained in the second paragraph, was also her personal information.

[para 29] Insight argues that what it disclosed about the reason for the Complainant's departure was more in her interests than disclosing a more negative version of why she

left. However, that is not the test. As I read section 20, the test is if a reasonable person would consider the disclosure to clearly be in the interests of the Complainant. So, the question is whether it would be in the Complainant's interests to disclose the information as opposed to not disclosing the information. I find that it was not clearly in the Complainant's interest to have this information disclosed.

[para 30] As I have found that it was not in the Complainant's interest to have her personal information disclosed, the first part of the test is not met and there is no need to examine whether she would or would not be reasonably expected to withhold consent.

2. Did the Organization have the authority to disclose the information without consent, because the information was the Complainant's "personal employee information" as that term is defined in PIPA section 1(j), and the terms of section 21 were met?

a. Was the information that was disclosed "personal employee information"?

[para 31] Insight argues that the Complainant's personal information that was disclosed by Insight is properly characterized as personal employee information. Personal employee information is defined in the Act as follows:

1(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;

[para 32] At the time of the disclosure, it is not clear if the Complainant was a current or former employee of Insight. She had apparently abandoned her position with Insight, and the memo indicates that Insight no longer considered her an employee, "effective immediately". However, Insight states that the sudden departure of the Complainant without notice meant that even though the Complainant had quit and even though Insight considered her employment terminated, there were still administrative procedures that needed to be completed before the Complainant was officially no longer an employee. Some of these administrative loose ends were not tied up until after the memo was sent. Therefore, it is arguable that the Complainant was still an employee at the time the memo was sent.

[para 33] However, whether the Complainant was a current or former employee at the time the memo was sent to Insight employees is not determinative of whether the information that was disclosed was “personal employee information”. Information of former employees can still be personal employment information. In Orders P2006-006 and P2006-007, the Commissioner stated:

The definition of “personal employee information” does not indicate that it is intended to include the employee information of former employees. However, section 21 clearly contemplates that personal employee information may be about an individual who “was an employee of the organization”. Using the approach adopted by Moreau J. [*Homes by Avi Ltd. v. Alberta (Workers’ Compensation Board, Appeals Commission)*, 2007 ABQB 203], the definition of “personal employee information” should be interpreted in the context of section 21 of the Act, which clearly contemplates that an organization may disclose the personal employee information of former employees, as well as current employees. In this way, the purpose of section 21 of the Act is not undermined by a definition of “personal employee information” that does not include the employment information of former employees.

(Orders P2006-006 and P2006-007 at para. 21)

[para 34] According to the definition in section 1(j) of the Act, in order to qualify as personal employee information, the information disclosed must be reasonably required by an organization, and collected, used or disclosed for the purposes of managing or terminating an employment relationship. The definition specifically excludes personal information that is unrelated to the employment relationship.

[para 35] I found above that Insight disclosed the Complainant’s name, employment history (both with Insight and that she gained new employment) and an opinion about her, all of which is her personal information. It is all also information that was reasonably required by Insight and was collected by Insight for the purpose of managing the employment relationship between the Complainant and Insight. This includes Insight’s opinions about the Complainant which, according to Insight’s evidence, were collected during her employment for the purposes of managing its employment relationship with the Complainant.

[para 36] I find that the Complainant’s personal information that was disclosed by Insight in its memo to Insight’s employees was personal employee information as defined by section 1(j) of the Act.

b. Was the disclosure of the personal employee information done in accordance with section 21 of the Act?

[para 37] As I have found the information disclosed by Insight was personal employee information, the disclosure of the information is governed by section 21 of the Act, which 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.

(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.

(3) Nothing in this section is to be construed so as to restrict or otherwise affect an organization's ability to disclose personal information under section 20.

[para 38] In accordance with section 21 of the Act, Insight would be permitted to disclose the Complainant's personal employee information without her consent if:

- the Complainant was a current or former employee of Insight;
- the disclosure is reasonable for the purposes for which the information is being disclosed; and
- the information disclosed is only information that is related to the employment relationship.

[para 39] Also, if the Complainant was a current employee, section 21(2)(c) of the Act would require Insight to give the Complainant notice of the disclosure.

[para 40] As well, in Order P2007-005 the Commissioner stated:

I would also add that section 7 must be read within the context of section 19 of the Act. As the Act prohibits disclosure for unreasonable purposes, it does not matter whether the Complainant consented to the disclosure or not: the Organization is prohibited from disclosing personal information if its purpose for disclosure is unreasonable. The limit

section 19 places on disclosure would have no purpose if individuals could consent to the unreasonable disclosure of personal information under section 7.
(Order P2007-005 at para 17)

[para 41] This reasoning is equally applicable to disclosure of personal employee information under section 21 of the Act. As I stated in Order P2009-011:

Reading section 21(2) of the Act as the Commissioner read section 19 of the Act in Order P2007-005 avoids an absurd result. If the purpose for the disclosure did not need to be reasonable, an organization could properly disclose sensitive and confidential information for any purpose, no matter how unreasonable, as long as the information disclosed was reasonable for the purpose. Therefore, in order to avoid this result, the purpose for the disclosure of personal employee information must be reasonable and the disclosure must also be reasonable for the purpose. In my view, it is purpose of the organization disclosing the information that dictates whether the disclosure is reasonable.
(Order P2009-011 at para 42)

[para 42] Therefore, the purpose for the disclosure must also be reasonable.

i. Was the purpose of the disclosure reasonable?

[para 43] I will deal first with Insight's disclosure of the fact that the Complainant was no longer its employee.

[para 44] Insight stated that its purposes for disclosing that the Complainant was no longer its employee was for, "managing and terminating the employment relationship." I do not understand how disclosing the Complainant's departure to staff members could be done for the purpose of managing and terminating Insight's employment relationship with the Complainant. Insight did not suggest that the memo was sent as a termination letter to the Complainant, nor that it was even ever intended to be sent to the Complainant.

[para 45] However, the Complainant's position at Insight involved regular interactions with staff members and contracted psychologists. Insight argues that it was necessary to inform staff of the Complainant's departure and who would be taking over her duties, so that staff and contract psychologists would know who to contact as to the Complainant's replacement. I accept that Insight disclosed the Complainant's departure from its employ for the purpose of informing its current employees of a significant change in the day-to-day operations of Insight, which directly affected them professionally. I find that this was a reasonable purpose.

[para 46] With respect to the disclosure of the fact that the Complainant had found new employment, Insight argues that this was done to:

...indicate the finality of the Complainant's decision. It was also done because the suddenness of the departure caused concern among the staff and psychologists of this close-knit workplace, and because it would dispel the notion that the Complainant had been terminated. These are reasonable purposes that indicate concern not just for the

management needs of the workplace, but also a concern for the well-being of the Complainant.

[para 47] I do not find that easing concerns over the Complainant's well being or dispelling the notion that she had been fired were reasonable purposes for disclosing this information. In my view, in the context of personal employee information, the purpose for disclosing the information must be connected to the employment relationship or to managing business operations in some way. As for indicating the finality of the Complainant's decision, I have some difficulty accepting this is a reasonable purpose for disclosing the Complainant's personal employee information. However, only for the purposes of the discussion that follows, I will assume that it is a reasonable purpose.

[para 48] With regard to disclosure of what I have found to be Insight's opinions about the Complainant the affidavit of the Executive Director of Insight states:

Because it was well-known among administrative staff and psychologists that there had been disagreements between [the Complainant] and the management of Insight, I also felt it was necessary to confirm in the most neutral fashion possible, and including the least amount of information possible, the fact that there had been a difference of opinion regarding the expectations for the workplace. I felt that making this statement would permit Insight to provide limited information regarding the termination of the employment relationship with [the Complainant] without providing sensitive information about [the Complainant].

I felt that it was necessary for the ongoing employment relationships that I have with the other administrative staff and psychologists to re-assert Insight's expectation that its employees maintain appropriate standards... I felt that it was important to inform the administrative staff and psychologists that these were the values and expectations that we had of staff of Insight on an ongoing basis.

[para 49] Based on this evidence, Insight describes the purpose of disclosing the Complainant's personal employee information in the second paragraph of the memo by saying:

This limited neutral information was necessarily provided to the Complainant's close work colleagues in relation to the ongoing management of the workplace and was reasonably required in the unusual circumstances both of the Complainant's sudden abandonment of her position and of the well-known problems with the Complainant's employment. In these circumstances, this limited use/disclosure of the Complainant's personal employee information was made for a reasonable purpose that falls within the human resources mandate of the management of Insight.

[para 50] I take from Insight's evidence and submissions that its purpose in disclosing the Complainant's personal employee information was to manage current employees by reiterating to them what Insight expects from its employees. The wording of the second paragraph of the memo does not seem to support this purpose particularly well as it does not read as a "neutral" statement of Insight's values and expectations for its current employees. However, for the purpose of this discussion I will accept that the information

in the second paragraph of the memo was disclosed at least in part for the purpose of managing employee relationships, which is a reasonable purpose.

ii. Was the disclosure reasonable for the purpose?

[para 51] Section 21(2)(a) of the Act requires that the disclosure of personal employee information be reasonable for the purpose. As discussed above, Insight disclosed the Complainant's personal employee information for three distinct purposes.

[para 52] The first disclosure was the fact that the Complainant was no longer working at Insight. The purpose of this disclosure was to inform staff that worked with the Complainant regularly that she was not going to be working with them any longer. The memo also stated who her temporary replacements were. I find that disclosing that the Complainant was no longer working at Insight was reasonable for that reasonable purpose.

[para 53] The second disclosure was that the Complainant had secured employment. Insight claims that the purpose of this disclosure was to inform staff that the Complainant would not be coming back, to ease any possible concerns for the Complainant's well being, and also to make it obvious that the Complainant had not been terminated by Insight. As I discussed above, easing concerns of employees is not a reasonable purpose for disclosing the Complainant's personal employee information. In any event, it was not reasonable to disclose the Complainant's personal employee information to address any of Insight's stated purposes. Insight could have simply stated that the Complainant resigned and would not be returning to work at Insight. There was no compelling reason to disclose that she obtained new employment and therefore, the disclosure was not reasonable.

[para 54] Finally, Insight disclosed the Complainant's personal employee information in the form of opinions that Insight had regarding the Complainant's capacities as an employee. Insight claims that it simply disclosed that there was a disagreement between the Complainant and Insight – which was well known – about differing expectations, and included a neutral statement of Insight's values and expectations for all employees. I found that this was an opinion of Insight about the Complainant. In any event, if the purpose was to reiterate what Insight expected of its employees, there was no reason to disclose that the Complainant had not, in Insight's opinion, met these expectations. Therefore the disclosure of the Complainant's personal employee information was not reasonable for the purpose.

iii. Was notice required?

[para 55] If the Complainant was a current employee at the time of the disclosure, Insight was required to give her notice of the disclosure of her personal employee information pursuant to section 21(2)(c). There is some ambiguity as to whether the Complainant was an employee or not at the time of the disclosure. Given the evidence before me, I regard it as more likely the Complainant was not an employee. In any event,

as I have found that Insight's disclosure of the Complainant's personal employee information was not reasonable for the purposes for which it was disclosed, nothing turns on this point and there is no need for me to decide if it was necessary for Insight to give the Complainant notice.

C. If the Organization did not have the authority to disclose the information without consent, did the Organization obtain the Complainant's consent in accordance with section 8 of the Act before disclosing the information?

[para 56] Section 7 of the Act provides that except where the Act provides otherwise, an organization must obtain consent prior to disclosing an individual's personal information. Consent does not always have to be express. In some instances it may be deemed. Section 8 of the Act outlines the form of consent. The portions of section 8 of the Act relevant to this matter state:

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.

...

[para 57] As I have already found that section 21 of the Act authorized Insight to disclose the fact that the Complainant was no longer employed at Insight, it is unnecessary for me to examine if she consented to the disclosure of that information. So, I will focus my discussion on the personal employee information that did not fit under section 21 of the Act, the disclosure of which requires the Complainant's consent. This consists of the fact that the Complainant had found new employment, and Insight's opinions about the Complainant.

[para 58] Insight did not obtain the Complainant's express consent to disclose her personal employee information. In the alternative to its argument that it complied with section 21 of the Act, Insight argues that it had implied consent to disclose the Complainant's information. The Act does not speak of implied consent but does contemplate deemed consent.

[para 59] In order for consent to be deemed, Insight must show that the Complainant voluntarily provided the information disclosed by Insight for the purpose for which Insight disclosed the information. The use of the term “the individual” in section 8(2)(a) of the Act indicates that this requirement is specific to the Complainant. In order to meet this test, there must be evidence that the Complainant voluntarily provided the information for the purpose for which it was disclosed. Section 8(2)(b) of the Act sets a general standard that it must also be reasonable that a person (not necessarily the Complainant) would voluntarily provide that information. Both tests must be met to establish deemed consent.

[para 60] I have no evidence that the Complainant voluntarily provided any information regarding her obtaining new employment directly to the management at Insight. In fact, the evidence from Insight establishes that the Complainant left her employment without informing management of her decision to leave.

[para 61] It could be argued that telling an employee of the organization (not in management) about her decision to quit and take new employment may constitute voluntarily providing this personal information to the organization. Given the unusual circumstances in this matter, I accept that the Complainant voluntarily provided this information to Insight. However, the voluntary provision contemplated by section 8(2)(a) of the Act must be done “for a particular purpose”. I cannot find that the Complainant voluntarily provided this information for the purposes Insight gave for the disclosure.

[para 62] The purposes that Insight gave for disclosing that the Complainant obtained new employment was to indicate the finality of the Complainant’s departure, to alleviate staff concerns over the Complainant’s well being, and to make it clear that the Complainant was not terminated by Insight. Although it would be reasonable for a person (not necessarily the Complainant in this matter) to voluntarily provide this information, there is no evidence before me to support the contention that the Complainant voluntarily provided this information to Insight for any of the purposes mentioned above. Therefore, I find that there was no deemed consent to release the fact that the Complainant had obtained new employment to Insight staff.

[para 63] Regarding the disclosure of Insight’s opinion about the Complainant contained in the second paragraph of the memo, Insight argues:

It was further known to staff members and psychologists that the Complainant disagreed with the views of management regarding the expectations in the workplace. Given her decision to quit her employment, it is reasonable to assume that she provided the personal information in the Memorandum voluntarily for the purpose of communicating this decision to those who require the information.

[para 64] Insight further argues that because the Complainant made it common knowledge that she intended to quit and obtain new employment and because it was common knowledge that Insight and the Complainant disagreed about workplace expectations, implied consent could be found as a result.

[para 65] In support, Insight sights 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 66] Insight submits that, in contrast, it has provided evidence that it was common knowledge among its staff that the Complainant was looking for new employment and there were differences in views regarding employer expectations. The evidence cited in support of this information being common knowledge comes from paragraphs 15 and 16 of the Affidavit of the Executive Director which states:

I am informed by administrative staff members and do believe that [the Complainant] spoke on numerous occasions about her intention to leave Insight and to find employment elsewhere. It is my belief based on my communications with these administrative staff members that it was common knowledge to the administrative staff and psychologists at Insight that [the Complainant] intended to leave Insight and to seek new employment.

It is my belief based on my conversations with administrative staff and psychologists that by September 2008 it was common knowledge among the administrative staff and psychologists that [the Complainant's] employment at Insight was fraught with difficulties and may be coming to an end. It is my belief based on these conversations that the administrative staff and psychologists at Insight were aware that the management of Insight and [the Complainant] held different opinions [about workplace expectations]...

[para 67] In my view this evidence is inadequate to establish common knowledge regarding the information disclosed among the people it was disclosed to. The Executive Director swears only to speaking to administrative staff about the Complainant's intention to leave. As well, he has sworn only that the Complainant's intention to find new employment was commonly known, not that she had found new employment – the latter being the information actually disclosed.

[para 68] As far as the information regarding the differing expectations between Insight and the Complainant, there is no evidence at all that the fact of this difference was made common knowledge by the Complainant. 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.

[para 69] 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 70] Insight also submits:

Given the asperity with which the Complainant spoke of her superiors and given her conflict with other staff members and psychologists, it is further submitted that she impliedly consented to a brief description regarding the circumstances that motivated her abrupt departure.

[para 71] The argument that the Complainant's having spoken in harsh terms about her superiors and having had conflicts with her colleagues amounts to implied consent to disclosure of her personal employee information is not supported in any respect by the Act, the evidence provided, or case law. Therefore, I do not accept this argument.

D. If the Organization had the authority to disclose the personal information under section 20 or under sections 21, did it disclose the information contrary to, or in accordance with, sections 19(1) of PIPA (disclosure for purposes that are reasonable)?

[para 72] Section 19(1) of the Act allows an Organization to disclose personal information only for reasonable purposes. I discussed Insight's purposes for disclosing the Complainant's personal employee information above. My comments and finding in that regard are equally applicable to this issue, and, therefore, there is no need to discuss this issue further.

E. If the Organization had the authority to disclose the personal information under section 20 but not under section 21, did it disclose the information contrary to, or in accordance with section 19(2) of PIPA (disclosure to the extent reasonable for meeting the purposes)?

[para 73] Section 19 of the Act states:

19(1) An organization may disclose personal information only for purposes that are reasonable.

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

[para 74] Even if an Organization's purpose for disclosing the personal information is reasonable, section 19(2) of the Act requires that the disclosure itself must be limited to what is reasonable to meet the purpose. In its argument regarding compliance with section 19(2) of the Act, Insight cites British Columbia Order P06-06 in support of its position that it was justified in disclosing the Complainant's personal information without consent because the memo disclosed only limited, non-sensitive information about the Complainant that was distributed internally to the staff and psychologists of Insight.

[para 75] As I stated above, the information disclosed by Insight was the Complainant's personal information. Insight's opinions about the Complainant and the Complainant's new-found employment were not innocuous information nor was it distributed to those who needed to know it. Therefore, I do not find this matter analogous to that in Order P06-06.

[para 76] In accordance with these sections, the purpose for using or disclosing personal information must be reasonable and the extent of the disclosure must be limited to only what is reasonable. The purposes for the disclosure of the Complainant's personal information, whether the purposes were reasonable, and the reasonableness of the disclosure, have been examined above. As I have already made findings regarding these issues, I will not address them further.

V. ORDER

[para 77] I make this Order under section 52 of the Act.

[para 78] I order Insight to cease disclosing the Complainant's personal employee information in contravention of sections 7 and 21 of the Act.

[para 79] I impose the following term on Insight:

Insight is to ensure that it does not disclose personal employee information of the Complainant that it is not authorized to disclose by ensuring that its employees are made aware of Insight's obligations under sections 7 and 21 of the Act.

[para 80] I further order Insight to notify me, in writing, within 50 days of receiving a copy of this Order that it has complied with the Order.

Keri H. Ridley
Adjudicator