

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER P2010-003**

September 15, 2010

**SYNERGEN HOUSING CO-OP LTD.**

Case File Number P1291

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

**Summary:** The Complainant complained that the Organization, a housing cooperative of which he is a member, contravened the *Personal Information Protection Act* (the “Act”) when it gave a copy of a complaint letter that he had written about another member to that other member without his consent.

The Adjudicator found that the Organization disclosed the Complainant’s personal information by giving the complaint letter to the third party, and that it did not establish that it had the authority to do so. First, the Complainant did not give his written or oral consent to the disclosure under section 8(1) of the Act, and he was not deemed to have consented under section 8(2). While the Complainant provided his personal information in the complaint letter for the particular purpose of having the Organization attempt to resolve his concerns, that particular purpose did not include disclosing the complaint letter to the third party being complained about.

Second, the Organization did not establish that it had the authority to disclose the Complainant’s personal information in the complaint letter without his consent. While it was arguable that it could do so, under section 20(m) of the Act, for the purposes of an investigation, the Organization failed to show that the Complainant’s concerns related, under section 1(f), to any breaches, contraventions, circumstances or conduct that may have occurred and that the Organization had a responsibility to investigate. Rather, the Complainant’s concerns appeared to involve personal matters between the Complainant and the third party, which had nothing to do with the Organization.

The Adjudicator also considered whether the Organization had authority to disclose the Complainant's personal information, without his consent, under section 20(b) of the Act (disclosure pursuant to a statute or regulation) or under section 20(j) (information publicly available). He found that the Organization did not establish that either of the sections applied.

The Adjudicator ordered the Organization to stop disclosing the Complainant's personal information in contravention of the Act or in circumstances that are not in compliance with the Act.

**Statutes, Regulations and Bylaws Cited:** **AB:** *Personal Information Protection Act*, S.A. 2003, c. P-6.5, ss. 1(f) [now 1(1)(f)], 1(f)(ii), 1(k) [now 1(1)(k)], 4(1), 4(3), 7, 7(1), 7(1)(d), 8, 8(1), 8(2), 8(3), 9, 16, 17, 19, 20, 20(b), 20(j), 20(m), 52, 52(3)(e), 52(4), 56, 56(1)(b)(i) and 56(1)(b)(ii); *Personal Information Protection Amendment Act, 2009*, S.A. 2009, c. 50; *Societies Act*, R.S.A. 2000, c. S-14; *Agricultural Societies Act*, R.S.A. 2000, c. A-11; *Companies Act*, R.S.A. 2000, c. C-21; *Cooperatives Act*, R.S.A. 2000, c. C-28.1; *Interpretation Act*, R.S.A. 2000, c. I-8, s. 1(1)(c)(i) and 28(1)(m); *Personal Information Protection Act Regulation*, Alta. Reg. 366/2003, s. 7; Synergen Housing Co-op Ltd., Bylaws, arts. 1.1, 30.1.1 and 30.8.1.h

**Authorities Cited:** **AB:** Orders P2005-001 and P2006-008.

## I. BACKGROUND

[para 1] The Complainant is a member of Synergen Housing Co-op Ltd. (the "Organization"). He made a complaint about another member (the "Third Party") to the Board of Directors of the Organization in a letter dated May 6, 2008 (the "Complaint Letter" or "Letter").

[para 2] In correspondence dated April 7, 2009 and received by this office on April 15, 2009, the Complainant complained that, without his permission, the Organization gave a copy of the Complaint Letter to the Third Party, and thereby contravened the *Personal Information Protection Act* (the "Act" or "PIPA").

[para 3] The Commissioner authorized a portfolio officer to investigate and attempt to resolve the matter. This was not successful. The Complainant requested an inquiry by letter dated May 18, 2009. A written inquiry was set down.

[para 4] On May 1, 2010, amendments to PIPA came into force by virtue of the *Personal Information Protection Amendment Act, 2009*. However, because the Organization's alleged contravention of the Act occurred prior to the amendments, the legislation applies as it existed previously. For the purpose of cross-reference, I note below when there has been an amendment to a section of PIPA that I discuss in the Order.

## II. INFORMATION AT ISSUE

[para 5] The information that the Organization allegedly used and/or disclosed in contravention of PIPA is the Complainant's personal information contained in the Complaint Letter.

## III. ISSUE

[para 6] The Notice of Inquiry, issued March 30, 2010, set out the issue of whether the Organization used and/or disclosed the Complainant's personal information in contravention of the Act or in circumstances that are not in compliance with the Act.

## IV. DISCUSSION OF ISSUE

**Did the Organization use and/or disclose the Complainant's personal information in contravention of the Act or in circumstances that are not in compliance with the Act?**

[para 7] The Complainant has alleged an improper use and/or disclosure of his personal information. The initial burden of proof rests with the Complainant, in that he has to have some knowledge, and adduce some evidence, regarding what personal information was used and/or disclosed, and the manner in which the personal information was used and/or disclosed; the Organization then has the burden to show that its use and/or disclosure of the Complainant's personal information was in accordance with PIPA (Order P2005-001 at para. 8; Order P2006-008 at para. 11).

[para 8] To assist the parties in making their submissions on the issue set out above, the Notice of Inquiry raised questions that the parties were invited to address if they considered them to be relevant. I identify these questions as they arise below, discussing them to the extent necessary.

Is the Organization a "non-profit organization" under section 56 of the Act?

[para 9] Under section 4(1) of PIPA, the Act applies to every organization and in respect of all personal information, except as provided elsewhere in the Act and subject to the regulations. Under section 56, PIPA has a limited application to certain non-profit organizations, in that it only applies in the case of personal information that is collected, used or disclosed by them in connection with a commercial activity. Section 56 reads, in part, as follows:

*56(1) In this section,*

...

*(b) "non-profit organization" means an organization*

(i) *that is incorporated under the Societies Act or the Agricultural Societies Act or that is registered under Part 9 of the Companies Act, or*

(ii) *that meets the criteria established under the regulations to qualify as a non-profit organization.*

(2) *Subject to subsection (3), this Act does not apply to a non-profit organization or any personal information that is in the custody of or under the control of a non-profit organization.*

(3) *This Act applies to a non-profit organization in the case of personal information that is collected, used or disclosed by the non-profit organization in connection with any commercial activity carried out by the non-profit organization.*

...

[para 10] Because the Organization is a housing cooperative, the Notice of Inquiry invited the parties to make submissions on whether the Organization is a “non-profit organization” under section 56, but neither of them did. The Organization indicated that it is a non-profit organization generally, but it did not submit that it is one within the meaning of section 56. I accordingly presume that the Organization believes or concedes that it is fully subject to the Act.

[para 11] Regardless, I find that the Organization is not a non-profit organization under section 56 of PIPA. Under section 56(1)(b)(i), a “non-profit organization” is an organization that is incorporated under the *Societies Act*, incorporated under the *Agricultural Societies Act*, or registered under Part 9 of the *Companies Act*. Because the Organization in this inquiry is a housing cooperative, I presume that it was incorporated under the *Cooperatives Act*. Portions of the Organization’s Bylaws were submitted in this inquiry, and article 1.1 refers to the *Cooperatives Act*. As the *Cooperatives Act* is not one of the Acts referred to in section 56(1)(b)(i) of PIPA, the Organization is not a non-profit organization within the meaning set out in that section.

[para 12] Under section 56(1)(b)(ii), a “non-profit organization” is also an organization that meets the criteria established under the regulations to qualify as a non-profit organization, but no such regulations have been established under the *Personal Information Protection Act Regulation*.

[para 13] I conclude that the Organization is fully subject to the requirements of PIPA.

Did the Organization use and/or disclose the “personal information” of the Complainant, as that term is defined in the Act?

[para 14] Under section 1(k) of PIPA [renumbered section 1(1)(k) as of May 1, 2010], “personal information” means “information about an identifiable individual”.

[para 15] The Complainant submitted a copy of the Complaint Letter that he wrote on May 6, 2008 to the Board of Directors of the Organization. I find that it contains his personal information, such as his identity as the person complaining about the Third Party and her family, information about his activities in relation to the housing cooperative, and information about his health.

[para 16] The Complainant also submitted a copy of a letter from the Third Party to him, dated May 16, 2008, in which she states that she received a copy of the Complaint Letter on May 13, 2008. I therefore find that the Organization disclosed the Complainant’s personal information in the Complaint Letter. The Complainant also says that the Organization disclosed the contents of the Letter to the Third Party sometime on or before May 13, 2008 when the Board of Directors read it to her, or she read it herself. The Organization does not dispute this. In any event, the fact that the Third Party was given a copy of the Complaint Letter is sufficient for me to find that the Organization disclosed to her all of the Complainant’s personal information in it.

[para 17] The Organization argues that the Complaint Letter does not contain the Complainant’s personal information, as it does not contain any “private” information that was not previously available to any member of the housing cooperative. This does not change my finding that the Complainant’s personal information was disclosed. First, the Complaint Letter appears, on the contrary, to contain information not previously available to other members of the housing cooperative, as it recounts a series of detailed facts and allegations that simply could not have been known to all members. Second, and more importantly, personal information is personal information regardless of whether the information is “private”, and personal information does not lose its character as personal information if the information is widely or publicly known. Having said this, I later discuss, in this Order, an organization’s authority to disclose personal information if it is publicly available.

[para 18] Some of the information in the Complaint Letter is not the Complainant’s personal information, as it is instead the personal information of the Third Party, her husband, her children and the Complainant’s daughter, or it is nobody’s personal information. However, it is sufficient that the Complaint Letter contains, in part, the Complainant’s personal information in order for me to find that the Organization disclosed his personal information.

[para 19] The Complainant addressed the Complaint Letter to “Synergen Housing Co-op Board of Directors”. He indicates that the Third Party is the Organization’s Privacy Officer, and that she read the Letter or had the Letter read to her, at a meeting of the Board of Directors. I therefore considered whether the Third Party was a Director

herself, in which case it would be the Complainant who disclosed his personal information to her. However, neither of the parties says that the Third Party was a Director, and I have been given no reason to believe that she was. The Complainant repeatedly states in his submissions that he wrote the Complaint Letter to the “Board of Directors”, not the Third Party, and the Organization has not responded by saying that the Third Party was, in fact, one of the Directors to whom the Letter was addressed.

[para 20] The Complaint Letter was reviewed at a meeting of the Board of Directors of the Organization, and the Organization acknowledges that it used the Complaint Letter in order to respond to the Complainant’s concerns set out in it. However, in his submissions, the Complainant complains about the fact that the Organization “let [the Third Party] read the letter and gave a copy of my letter of complaint to [the Third Party] without my permission/consent”. I find that this is a complaint only about the disclosure of the Complainant’s personal information, and that the Complainant has not complained about the use of his personal information by the Organization. I will therefore not discuss the use of the Complainant’s personal information any further in this Order.

If the Organization used and/or disclosed the “personal information” of the Complainant, was the use and/or disclosure excluded from the Act by virtue of section 4(3)?

[para 21] Under section 4(3) [amendments to which came into force on May 1, 2010], PIPA does not apply to certain information, or to the disclosure of certain information. Neither of the parties made submissions in response to the above question set out in the Notice of Inquiry, presumably because they agree that the disclosure of the Complainant’s personal information in the Complaint Letter is not excluded from the application of the Act by virtue of section 4(3).

[para 22] In the absence of relevant argument and evidence from the parties, I conclude that PIPA applies to the disclosure of the Complainant’s personal information in the Complaint Letter by the Organization.

Did the Organization use and/or disclose the Complainant’s personal information contrary to, or in compliance with, section 7(1) of the Act?

[para 23] As I have found that the Complainant has not complained about the use of his personal information, section 7(1)(d) is the only relevant section here. It reads as follows:

*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 24] As set out above, an organization must not disclose an individual's personal information unless the individual consents, or unless "the Act provides otherwise" – which means with prior notice under section 8(3), or where consent is not required under section 20. The Notice of Inquiry accordingly included the following questions for the parties to address to the extent that they found relevant:

Did the Organization have the authority to use and/or disclose the Complainant's personal information without consent, as permitted by sections 17 or 20 of the Act?

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

Did the Organization have the authority to use and/or disclose the Complainant's personal information under section 8(3) of the Act?

[para 25] Section 17 is not relevant here, as it deals with the use of personal information. Section 8 and 20 [amendments to which came into force on May 1, 2010] read, in part, as follows:

*8(1) An individual may give his or her consent in writing or orally to the collection, use or disclosure of personal information about the individual.*

*(2) An individual is deemed to consent to the collection, use or disclosure of personal information about the individual by an organization for a particular purpose if*

*(a) the individual, without actually giving a consent referred to in subsection (1), voluntarily provides the information to the organization for that purpose, and*

*(b) it is reasonable that a person would voluntarily provide that information.*

...

*(3) Notwithstanding section 7(1), an organization may collect, use or disclose personal information about an individual for particular purposes if*

*(a) the organization*

*(i) provides the individual with a notice, in a form that the individual can reasonably be expected to understand, that the organization intends to collect, use or disclose personal information about the individual for those purposes, and*

*(ii) with respect to that notice, gives the individual a reasonable opportunity to decline or object to having his or her personal information collected, used or disclosed for those purposes,*

*(b) the individual does not, within a reasonable time, give to the organization a response to that notice declining or objecting to the proposed collection, use or disclosure, and*

*(c) having regard to the level of the sensitivity, if any, of the information in the circumstances, it is reasonable to collect, use or disclose the information as permitted under clauses (a) and (b).*

*(4) Subsections (2) and (3) are not to be construed so as to authorize an organization to collect, use or disclose personal information for any purpose other than the particular purposes for which the information was collected.*

...

*20 An organization may disclose personal information about an individual without the consent of the individual but only if one or more of the following are applicable:*

...

*(b) the disclosure of the information is pursuant to a statute or regulation of Alberta or Canada that authorizes or requires the disclosure;*

...

*(j) the information is publicly available;*

...

*(m) the disclosure of the information is reasonable for the purposes of an investigation or a legal proceeding;*

...

[para 26] The Complainant explains that he wrote the Complaint Letter following a dispute that he had with the Third Party and her husband. Their children apparently damaged the Complainant's car, but the Third Party's husband refused to pay for the damage. The Complainant says that he then endured verbal abuse from the Third Party's family in the form of threats of violence, and threats of being kicked out of the housing cooperative. The Complainant wrote to the Board of Directors to explain the situation and to seek help in resolving the problems that he was having with the Third Party, her husband and her children. The Complaint Letter refers not only to the matter of the car damage and alleged verbal abuse, but also two other previous incidents. One involved alleged damage by the Third Party's husband to a jack owned by the Complainant when it was lifting up the Complainant's car. The other involved the Complainant's daughter allegedly being physically hurt by the Third Party's children.



*Was there an authorized disclosure with consent or prior notice?*

[para 27] Section 8 of PIPA contemplates the disclosure of personal information with written, oral or deemed consent, or with proper prior notice. The Complainant says that he was never asked for his consent to have a copy of his Complaint Letter provided to the Third Party, and that he did not give his consent. He submits that he wrote the Letter to the Board of Directors only, not to the person about whom he was complaining.

[para 28] I find that the Complainant did not give his consent, in writing or orally, to the disclosure of his personal information in the Complaint Letter under section 8(1) of PIPA. The Organization does not allege that he did. The Organization also does not argue that it had the authority to disclose the Complainant's personal information in the Complaint Letter on the basis of prior notice under section 8(3). I find that it did not have authority under that section.

[para 29] As authority for it to disclose the Complainant's personal information in the Complaint Letter, the Organization cites article 30.1.1 of its Bylaws:

*30.1.1 The Cooperative may collect, use & disclose Personal Information about individuals with which it does business, including members, when five conditions have been met:*

- a. the information is required to carry out the business of the Cooperative*
- b. the information is needed for an identified purpose*
- c. that purpose has been explained to the individual*
- d. the individual has given Consent to the collection, use or disclosure of the information*
- e. the individual understands that they may withdraw their Consent at anytime and understands the consequences of that withdrawal of Consent.*

[para 30] Because obtaining the individual's consent is one of the five conditions above, the foregoing effectively incorporates the requirements of sections 7 and 8 of PIPA regarding consent (as well as section 9 regarding withdrawal or variation of consent). The Organization goes on to submit:

*During the course of investigation of [the Complainant's] complaint, the above five conditions were met. The letter [the Complainant] wrote was required to conduct the investigation that was requested; [the Complainant] was aware that we would need to conduct an investigation into his allegations; As the complain[t] was written to the Board of Directors, [the Complainant] was aware that his consent that we use the letter was implicitly implied; and [the Complainant] did not revoke his consent until after the investigation was complete, after the information was used and disclosed.*

[para 31] In referring to “implied” consent, the Organization appears to be arguing that it had the Complainant’s deemed consent, under section 8(2) of PIPA, to disclose his personal information in the Complaint Letter. For there to be deemed consent under section 8(2), there must be a voluntary provision of personal information, the information must be provided for a particular purpose, and it must be reasonable for the individual to voluntarily provide the information for that purpose. While the Complainant voluntarily provided the Complaint Letter to the Organization, I find, for the reasons set out below, that there was no deemed consent, on his part, to the Organization’s disclosure of the Letter to the Third Party.

[para 32] The Complaint Letter recounts the alleged incidents that occurred between the Complainant’s family and the Third Party’s family, and then concludes as follows:

*I want something done about this situation before my daughter or I suffer any more damage. [...] Something MUST BE DONE THIS TIME to prevent any further occurrences.* [Emphasis in original.]

Given the above, the Complainant provided his personal information for the particular purpose of having the Board of Directors attempt to resolve the situation between the Complainant and the Third Party’s family. However, on my review of the Complaint Letter as a whole, I find that the particular purpose did not include disclosing the Letter to the Third Party.

[para 33] The Complainant submits that the Letter was written in strict confidence because “that is how I wrote this complaint letter.” I agree that the tone and content of the Complaint Letter demonstrates that the Complainant was not providing it for the particular purpose of having it disclosed to the Third Party. Resolving the Complainant’s concerns did not automatically or necessarily entail the Organization giving a copy of the Complaint Letter to the Third Party, as that disclosure was not required in order for something to be “done about this situation”. If the Organization had the authority to investigate or take action in the matter, it could have had the relevant discussions with the Third Party, or taken action against her, without disclosing everything that the Complainant wrote in the Complaint Letter.

[para 34] I conclude that the Organization did not have the authority to disclose the Complainant’s personal information in the Complaint Letter under section 8(1), 8(2) or 8(3) of PIPA, whether on the basis of written, oral or deemed consent, or prior notice.

[para 35] At this point, I acknowledge that the Organization may have had authority, by virtue of deemed consent, to disclose a certain or minimal amount of the Complainant’s personal information in the Complaint Letter. Hypothetically, for instance, the Complainant’s identity as a person making a complaint to the Board of Directors might have to have been disclosed to the Third Party, or effectively would have been disclosed, once the Board discussed the nature of the Complainant’s concerns with her. The Board discussing the concerns with the Third Party, at least in general terms, was arguably one of the particular purposes for which the Complainant gave the

Complaint Letter to the Board, given that he raised the concerns and asked for something to be done. Taking action against the Third Party or her family, assuming that some form of action by the Organization were authorized and warranted, may likewise have required the Organization to reveal *some* of the Complainant's personal information to her.

[para 36] However, the Complainant's complaint in this inquiry is that the Organization disclosed the entire contents of the Complaint Letter to the Third Party. I therefore do not intend to determine whether or which specific personal information of the Complainant in the Complaint Letter might hypothetically have been disclosed in accordance with PIPA. In other words, when I refer in this Order to disclosure of the Complainant's personal information in the Complaint Letter, I am discussing the fact that the Organization disclosed all of the Complainant's personal information in the Complaint Letter.

*Was there an authorized disclosure without consent?*

[para 37] Section 7(1)(d) of PIPA states that an individual's consent to the disclosure of his or her personal information is required "except where this Act provides otherwise". Here, it is possible that the Organization had the authority to disclose the Complainant's personal information in the Complaint Letter, without his consent, on the basis that the disclosure was "reasonable for the purposes of an investigation" under section 20(m) of PIPA, which is reproduced above. [Although section 20(m) applies regardless, I note that article 30.8.1.h of the Organization's Bylaws paraphrases section 20(m) in stating that an individual's consent (i.e., under article 30.1.1 of the Bylaws) is not required if the personal information is for an investigation or legal proceeding.]

[para 38] Section 1(f) [renumbered section 1(1)(f) as of May 1, 2010] defines "investigation" as follows:

*1(f) "investigation" means an investigation related to*

*(i) a breach of agreement,*

*(ii) a contravention of an enactment of Alberta or Canada or of another province of Canada, or*

*(iii) circumstances or conduct that may result in a remedy or relief being available at law,*

*if the breach, contravention, circumstances or conduct in question has or may have occurred or is likely to occur and it is reasonable to conduct an investigation;*

[para 39] Section 1(f)(ii) above [renumbered section 1(1)(f)(ii) as of May 1, 2010] refers to the contravention of an enactment. Under section 28(1)(m) of the *Interpretation Act*, "enactment" means an Act or a regulation or any portion of an Act or regulation. In

turn, section 1(1)(c)(i) of the *Interpretation Act* says that “regulation” means, among other things, a rule, proclamation, bylaw or resolution enacted in the execution of a power conferred by or under the authority of an Act.

[para 40] In its initial submission, the Organization referred to its “investigation” of the Complainant’s complaint. In order for me to decide whether sections 1(f) and 20(m) were applicable in this case, I arranged for this office to ask both parties for more detailed submissions. The parties were also asked to provide any other documentation that was relevant and not yet submitted – such as agreements, policies and additional excerpts from the Organization’s bylaws – so that I could determine whether there had been an “investigation” within the terms of section 1(f) and, if so, whether the disclosure of the Complainant’s personal information in the Complaint Letter was “reasonable for the purposes of an investigation” within the terms of section 20(m).

[para 41] In response, the Organization says that it did not really conduct an “investigation” and that this was a poor word choice in its initial submission. It explains that it was instead attempting to conduct a “mediation” of the matters between the Complainant and the Third Party. It submits the following:

*The Board of Directors examined if there was a breach of our published Policies and Bylaws. To determine this, a discussion was held with all members involved on an individual basis keeping in mind privacy issues. It is important to understand that the contents of [the Complainant’s] letter needed to be disclosed to the other members involved. As this letter was written to the Board of Directors requesting action on the matter, it was a vital step. It was determined by the Board of Directors, one [o]f whom is [the Complainant’s] mother, that a breach of the Policies and Bylaws did not exist. This decision was determined in the following manner. [The Third Party] and [the Complainant] were the only members with whom the discussion of the issue was made and during the discussions, the Board of Directors made their decisions.*

[para 42] The Organization then explains that it arranged a “mediation session” to be attended by the Board of Directors, the Complainant, the Third Party and a few other individuals, to see what might be done to resolve the Complainant’s concerns. However, the Board of Directors concluded that it could still not take any action under the bylaws or policies of the Organization.

[para 43] The Complainant submits that there was no investigation regarding his complaint and that he did not know that the Organization was going to do any investigation. He says, in particular, that the Organization gave the Complaint Letter to the Third Party without an investigation taking place *beforehand*. He also disputes the Organization’s version of events and submissions in relation to the “mediation session”.

[para 44] Despite the Organization’s own position that it did not conduct an “investigation”, it remains arguable that the Organization did conduct one within the

meaning of section 1(f) of PIPA. In other words, I considered the facts before me and not just the terms “investigation” and “mediation” used by the Organization. However, on my review of the submissions of the parties and all of the evidence, I find, for the reasons that follow, that disclosure of the Complainant’s personal information in the Complaint Letter was not reasonable for the purposes of an investigation under section 20(m).

[para 45] Under section 1(f), “investigation” means, among other things, an investigation related to a breach of agreement, a contravention of an enactment (which can include a rule, proclamation, bylaw or resolution), or circumstances or conduct that may result in a remedy or relief being available at law – but only if the breach, contravention, circumstances or conduct in question “has or may have occurred ... and it is reasonable to conduct an investigation”. Here, the Organization concluded that the Third Party did not breach any of the Organization’s policies or bylaws, but it does not explain whether such a breach “may have occurred”, which necessitated an investigation. It also does not explain how or why it was “reasonable to conduct an investigation”, as required under section 1(f).

[para 46] The Complainant’s allegations in his Complaint Letter concerned damage to his personal property (his car), threats and verbal abuse, another instance of damage to his personal property (his jack), and physical injury to his daughter. As these are essentially personal matters between the Complainant and the Third Party, I have doubts that any of the allegations were in respect of breaches, contraventions, circumstances or conduct that the Organization had reason or authority to investigate. In other words, no breach or contravention of the Organization’s agreements, bylaws, etc. “ha[d] or may have occurred”, as the allegations in the Complaint Letter really had nothing to do with the Organization’s agreements, bylaws, etc. An investigation was also not reasonable on the basis that it related to circumstances or conduct that the Organization oversees and that “ha[d] or may have occurred”.

[para 47] The proper approach was for the Board of Directors of the Organization to first determine – without disclosing the Complaint Letter to the Third Party – whether the alleged conduct of the Third Party or her family would have been, had it in fact occurred, a violation of an agreement, bylaw, etc. of the Organization. This first step is not, in my view, an investigation within the meaning of section 1(f); rather it is a determination as to whether an investigation is warranted or would be reasonable. Even if this preliminary determination may be characterized as part of an “investigation” by the Organization, it was not necessary to disclose the Complaint Letter to the Third Party in order to make that preliminary determination. Therefore, the disclosure would still not have been “reasonable” for the purposes of an investigation under section 20(m).

[para 48] In any event, once – as appears to be the case – the Board of Directors determined that the alleged conduct of the Third Party and her family would not amount to a violation of an agreement, bylaw, etc. of the Organization even if the Complainant’s allegations were true, any further review of the matter or action on the part of the Organization was not an investigation within the terms of section 1(f). This is because the Organization had effectively concluded that no breach, contravention, circumstances

or conduct that it has the authority or responsibility to investigate, or continue to investigate, had taken place.

[para 49] In his submissions, I note that the Complainant says that the Third Party and her husband threatened to have him kicked out of the housing cooperative, which may or may not have something to do with the Organization's agreements, bylaws or responsibilities. However, he did not express that particular concern in the Complaint Letter. Even if he had – and even if this or any other allegation has something to do with breaches, contraventions, circumstances or conduct that the Organization has a responsibility to investigate (or “mediate” to use the alternate term of the Organization) – the Organization had the burden of showing me this. I also note that the Complainant referred in his Complaint Letter to “the good neighbour policy”, but I have no idea what is set out in that policy. If the policy was relevant to the Organization's authority to disclose the Complainant's personal information, it was again up to the Organization to explain.

[para 50] I again recognize that the Complaint Letter asked the Organization, through the Board of Directors, to do something in response to the Complainant's concerns about the Third Party and her family. I also acknowledge that the Board of Directors was trying to be helpful. However, because the Organization had no authority to disclose the Complaint Letter to the Third Party for the purposes of an investigation, its only options were to address the matter without disclosing the Complaint Letter, obtain the Complainant's consent to disclose the Letter, find some other basis (if it existed) for disclosing the Letter without the Complainant's consent, or decline any further involvement once it determined that there was nothing that it could really do.

[para 51] To the extent that the Organization may have instead had authority to disclose the Complainant's personal information, without his consent, for the purposes of a “mediation”, there is no such express authority set out in PIPA. I also explained, earlier in this Order, that there was no deemed consent on the part of the Complainant to give a copy of the Complaint Letter to the Third Party in the course of the Organization's resolution of his concerns, however one might characterize the form of that requested resolution.

[para 52] The foregoing said, I will now review whether there was some other basis on which the Organization had authority to disclose the Complainant's personal information in the Complaint Letter without his consent.

[para 53] The Organization submits that all members of the housing cooperative are part owners and are therefore entitled to a large amount of information about the running of the cooperative. It argues that, once the Complaint Letter became the property of the Organization, any Class A shareholder, which includes all members living in the housing cooperative, had a right to view the Letter at any time. If the Organization is suggesting that, under section 20(b) of PIPA, it had legal authority pursuant to a particular statute or regulation to disclose the Complaint Letter to all Class A shareholders, it has not pointed to any particular provision that would allow me to find that section 20(b) applies. While

it is common for individuals with an interest in a particular entity to have a right of access to certain information held by that entity, such as financial information, I doubt that there is a statutory or regulatory provision entitling Class A shareholders or members of the Organization to see copies of all complaints made by one shareholder or member against another shareholder or member.

[para 54] Finally, the Organization submits that the Complainant made all of the complaints listed in the Complaint Letter publicly during several arguments that occurred orally in open areas, and in front of several members who were not involved in the issues between the Complainant and the Third Party. The Organization also says that, before getting a copy of the Complaint Letter, the Third Party was already aware of certain information about the Complainant's health, which he included in the Letter. If the Organization is suggesting that it had authority to disclose the Complainant's personal information on the basis that the information is publicly available under section 20(j) of PIPA, that section does not apply in this case. Under section 7 of the *Personal Information Protection Act Regulation*, personal information does not come within the meaning of "the information is publicly available" except in specific circumstances, none of which exist in this inquiry. In fact, all of the specific circumstances involve *recorded* personal information, whereas the Organization makes its arguments here on the basis of the Complainant's allegedly public *oral* disclosures.

[para 55] Because the Organization has not established that it had the Complainant's written, oral or deemed consent to disclose his personal information in the Complaint Letter under section 8(1) or 8(2), that it disclosed his personal information following proper notice under section 8(3), or that it had the authority to disclose the Complainant's personal information without his consent under section 20, I conclude that it disclosed the Complainant's personal information contrary to section 7(1) of PIPA.

Did the Organization use and/or disclose the information only for purposes that are reasonable, and only to the extent that was reasonable, as permitted by sections 16 or 19 of the Act?

[para 56] Because I have found that the Complainant complained only about a disclosure of his personal information, only section 19 is relevant to this inquiry. It reads as follows:

*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 57] The Organization submits that disclosure of the "exact wording of the complaint was required in order to carry out the investigation [or mediation] into the

alleged matters”. I take this to mean that the Organization believes that it had to disclose the Complaint Letter itself, and all of its contents.

[para 58] As discussed in the preceding parts of this Order, the Organization has not established that it had the authority, for any purpose, to disclose all of the Complainant’s personal information in the Complaint Letter, whether with or without his consent or prior notice. If an organization does not establish that it disclosed personal information with consent or prior notice, or for an authorized purpose without consent, it follows that the organization did not disclose the personal information for a reasonable purpose or to a reasonable extent.

[para 59] I accordingly conclude that the Organization did not disclose the Complainant’s personal information in the Complaint Letter in accordance with section 19 of PIPA.

## **V. ORDER**

[para 60] I make this Order under section 52 of PIPA.

[para 61] I find that the Organization disclosed the Complainant’s personal information in contravention of PIPA or in circumstances that were not in compliance with PIPA.

[para 62] Under section 52(3)(e) of PIPA, I order the Organization to stop disclosing the Complainant’s personal information in contravention of the Act or in circumstances that are not in compliance with the Act.

[para 63] Under section 52(4), I specify, as a term of this Order, that the Organization ensure that its directors and officers are made aware of the Organization’s obligations under PIPA. Compliance with this portion of the Order can be achieved by communicating the requirements of PIPA to the directors and officers in a way that the Organization considers appropriate.

[para 64] I further order the Organization to notify me, in writing, within 50 days of receiving a copy of this Order that it has complied with the Order. The notice to me should include a description of what the Organization did to comply with the preceding paragraph of this Order.

Wade Riordan Raaflaub  
Adjudicator