

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER P2010-005

September 27, 2010

WHITEHORN VILLAGE 1 CONDOMINIUM CORPORATION

Case File Number P1134

Office URL: www.oipc.ab.ca

Summary: The Complainant complained that her personal information was disclosed by the President of Whitehorn Village 1 Condominium Corporation's board to another resident of the condominium and another individual contrary to the *Personal Information Protection Act*.

The Adjudicator found that the President was acting in her official capacity as a board member when she disclosed the Complainant's personal information to two individuals. Therefore, the Adjudicator found that the Complainant's personal information had been disclosed by the Organization.

Further, the Adjudicator found that the Organization disclosed the Complainant's personal information without her consent and in contravention of section 19 of the Act.

Statutes Cited: AB: *Personal Information Protection Act*, S.A. 2003, c. P-6.5 ss. 1(k), 7(1), 8(1), (2), and (3), 19, 20, and 52.

Authorities Cited: AB: Orders H2004-005, F2005-021, and P2006-011.

I. BACKGROUND

[para 1] The Complainant was a resident of a condominium owned by the Organization. The Complainant alleges that on July 17, 2008, she overheard a loud

conversation between the President of the Organization's board ("the President"), a resident of the condominium ("the Resident") and another individual ("the Witness"), in which the President disclosed information relating to the Complainant's personal life to the Resident and the Witness.

[para 2] On September 8, 2008, the Complainant wrote to the Office of the Information and Privacy Commissioner ("this office") and, pursuant to the *Personal Information Protection Act* ("the Act"), requested an investigation into the alleged disclosure of her personal information to the Resident and the Witness and any other residents who had overheard the President's loud comments.

[para 3] An investigation was conducted by a portfolio officer in an attempt to settle this matter. However, on February 4, 2009, the Complainant requested an inquiry into this matter. A written inquiry was authorized and submissions were received from both the Complainant (through her counsel) and the Organization (through the President).

II. ISSUES

[para 4] The Notice of Inquiry dated May 25, 2010 set out the issues for this inquiry as follows:

Issue A:

Did the Organization disclose "personal information" of the Complainant as that term is defined in the Act?

Issue B:

Did the Organization disclose the information contrary to, or in compliance with section 7(1) of the Act? In particular,

- a. **Did the Organization have the authority to disclose the information without consent as permitted by section 20 of the Act?**
- b. **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 collecting, using or disclosing the information? In particular,**
 - i. **Did the individual consent in writing or orally, or**
 - ii. **Is the individual deemed to have consented by virtue of the conditions in section 8(2)(a) and (b) having been met? Or**
 - iii. **Is the disclosure permitted by virtue of the conditions in 8(3)(a), (b) and (c) having been met?**

Issue C:

If the Complainant consented to disclosure of her personal information, did the Complainant withdraw consent within the terms of section 9(1) of the Act?

Issue D:

If the Complainant withdrew or varied any consent she had given, did the Organization comply with section 9(4)(a) of the Act, or with section 9(4)(b) of the Act?

Issue E:

If the Organization disclosed the personal information of the Complainant pursuant to the Complainant's consent, does section 10 of the Act apply to the disclosure?

Issue F:

Did the Organization disclose the information contrary to, or in accordance with, section 19(1) of the Act?

Issue G:

Did the Organization disclose the information contrary to, or in accordance with, section 19(2) of the Act?

III. DISCUSSION OF ISSUES

A: Did the Organization disclose “personal information” of the Complainant as that term is defined in the Act?

[para 5] The Complainant alleges that there was a loud conversation between the President, the Resident and the Witness in which she overheard the President disclose her personal information to the Resident and the Witness. The conversation was held in a parking lot adjacent to the Complainant's unit and was allegedly so loud that she was able to hear what was said, even with her windows closed.

[para 6] In support of her allegation, the Complainant provided a copy of a letter from the Resident in which he states that the President said (in a loud voice) that, “[the Complainant] has problems reading the ACMS issued balance sheets including her own May (2008?) condominium fee statements showing an eight hundred and ninety dollar debit.”

[para 7] In coming to my conclusions in this inquiry, I did not rely on the submissions of the Complainant, other than the statement by the Resident, which was

provided to this office as part of the Complainant's initial complaint. The reason for restricting my findings to those which could be supported by information other than what was in the Complainant's submissions, is that the Complainant relied heavily on the investigation report by the portfolio officer from this office. There is also a statement from the Witness, which may have been obtained by the portfolio officer in the course of her investigation.

[para 8] It is not appropriate for the adjudicator in an inquiry to rely on the evidence gathered by and the opinions of a portfolio officer who conducted an investigation. This has been the position expressed in past orders from this office, which I will follow (Order H2004-005 at paras 81-82 and F2005-021 at para 18).

[para 9] The Organization's submissions were signed by the President and written in the first person. In the submissions, the Organization states that, "[n]o personal information was ever given about [the Complainant] at any time." The submissions go on to say:

Statement of "she didn't read her e-mail properly" does not violate any privacy laws. I never stated that she owed money. Indeed please read e-mail of June 30/08 @ 5:58 pm clearly does state NO MONEY WAS OWED. Nor does it state that she is "stupid".

[para 10] Section 1(k) of the Act defines personal information as follows:

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

[para 11] In its submissions, the Organization suggests that the Complainant and the Resident are difficult homeowners who have caused continual problems for the President. While the Complainant and Resident's past issues with the President have little to do with whether the Complainant's personal information was disclosed, it could, to some degree, speak to the credibility of their accounts of what was said by the President.

[para 12] Although the President denied saying that the Complainant owed money or was stupid, the issue is not the content of the statement, but whether the President's comments disclosed the Complainant's personal information. That being said, the Organization seems to admit that the President made a statement to the Resident and Witness about the Complainant not reading her e-mail properly.

[para 13] Given the information before me, I accept the account of the conversation given by the Resident and supported somewhat by the submissions of the Organization. I find that the President did disclose information that was the Complainant's personal information. These statements are about the Complainant, an identifiable individual.

[para 14] Attached to the Organization's submissions is a letter written by its Board of Directors to this office dated November 7, 2008. The letter is apparently a response to issues raised by the portfolio officer in the course of her investigation. The letter states

that on June 24, 2008, the Complainant contacted the Organization's management company inquiring about what appeared to be debt showing on a ledger of monthly condominium fees. The Complainant's e-mail was responded to by the President in her capacity as a board member. Therefore, I find that the Complainant's personal information that was disclosed by the President was information that the President came to know through her position on the board. In making the disclosure, President was discussing the business of the board (the payment of fees) and was acting in her capacity as President of the board.

[para 15] Given the Organization's submissions and the evidence it provided, I find that the President was acting in her capacity as board President and on the Organization's behalf. Therefore, I find that the Organization did disclose information about the Complainant to the Resident and the Witness and to another individual.

B: Did the Organization disclose the information contrary to, or in compliance with section 7(1) of the Act?

a. Did the Organization have the authority to disclose the information without consent as permitted by section 20 of the Act?

[para 16] Section 20 of the Act sets out the circumstances in which an Organization is permitted to disclose personal information without the consent of an individual.

[para 17] The Organization did not argue that any of the subsections in section 20 of the Act apply to the disclosure of the Complainant's personal information by the President and I find that none do apply.

b. 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 collecting, using or disclosing the information ?

[para 18] Sections 8(1), (2), and (3) of the Act states:

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).

...

[para 19] The Complainant submits that she did not consent, in any form, to the disclosure of her personal information by the Organization. She also argues that she was not given notice of the disclosure.

[para 20] The Organization did not argue that the Complainant gave consent to the Organization to disclose her personal information nor did it argue that the Complainant was notified of the disclosure.

[para 21] I find that the Complainant did not give consent, either in writing or orally, to the disclosure of her personal information to the Resident or the Witness. Further, I find that there was no deemed consent given for the disclosure because the information provided by the Complainant, if it was provided voluntarily by the Complainant, was surely not provided for the purpose that it would be disclosed to third parties in the course of a discussion about unrelated matters.

C: If the Complainant consented to disclosure of her personal information, did the Complainant withdraw consent within the terms of section 9(1) of the Act?

D: If the Complainant withdrew or varied any consent she had given, did the Organization comply with section 9(4)(a) of the Act, or with section 9(4)(b) of the Act?

E: If the Organization disclosed the personal information of the Complainant pursuant to the Complainant's consent, does section 10 of the Act apply to the disclosure?

[para 22] Given my finding that the Complainant did not consent to the disclosure of her personal information, I will not comment on issues, C, D, and E.

F: Did the Organization disclose the information contrary to, or in accordance with, section 19(1) of the Act?

G: Did the Organization disclose the information contrary to, or in accordance with, section 19(2) of the Act?

[para 23] 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 24] In Order P2006-011 (quoting Order P2006-008) the Commissioner stated:

The ***Personal Information Protection Act*** ("PIPA") like the *Freedom of Information and Protection of Privacy Act* (the "FOIP Act") is silent with regard to where the burden of proof rests for an inquiry into a complaint about the collection, use and disclosure of personal information. In Order P2005-001, I adopted the approach previously taken in Order 97-004 with regard to the FOIP Act that addressed the burden of proof issue and applied the following criteria:

- a) who raised the issue; and
- b) who is in the best position to meet the burden of proof

Relying on these criteria in Order P2005-001, I stated that a complainant has to have some knowledge of the basis of the complaint and it made sense to me that the initial burden of proof can, in most instances, be said to rest with the complainant. An organization then has the burden to show that it has authority under the Act to collect, use and disclose the personal information.

(Order P2006-011 at para 16)

[para 25] The Commissioner's comments apply in this case. In this instance, the Complainant has discharged the evidentiary or initial burden of proof to show that her personal information was disclosed. Therefore, the burden of proof shifts to the Organization to prove that it disclosed her information in accordance with the Act, including that it disclosed the Complainant's personal information for a reasonable purpose and only to a reasonable extent, in accordance with section 19 of the Act.

[para 26] The Organization's purpose for disclosing the Complainant's personal information is not clear to me. The Organization provided no submissions or evidence as to what its purpose was in disclosing the Complainant's personal information. As I do not know what the Organization's purpose was, I have no basis for finding that its purpose was reasonable, or that the disclosure was only to a reasonable extent.

[para 27] Therefore, I find that the Organization disclosed the Complainant's personal information contrary to section 19 of the Act.

V. ORDER

[para 28] I make this Order under section 52 of the Act.

[para 29] I order the Organization to cease disclosing the Complainant's personal information in contravention of sections 7 and 19 of the Act.

[para 30] I impose the following term on the Organization:

The Organization is to ensure that it does not disclose personal information of the Complainant that it is not authorized to disclose by making its employees and board members aware of the Organization's obligations under sections 7 and 19 of the Act.

[para 31] 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.

Keri H. Ridley
Adjudicator