

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER P2013-08

December 17, 2013

SOBEYS GROUP INC.

Case File Number P1600

Office URL: www.oipc.ab.ca

Summary: An individual made a complaint under the *Personal Information Protection Act* (PIPA) that her personal information had been improperly collected, used and disclosed by Sobeys Group Inc. (the Organization). The Complainant is an employee of the Organization and the collection, use, and disclosure about which the complaint was made occurred while the Complainant was on medical leave.

The Adjudicator found that the Complainant’s personal information might have been “personal employee information” but that the Organization did not meet the requirements for collecting personal employee information. The Adjudicator also found that the use and disclosure of the information was not authorized by the Act’s provisions for using and disclosing personal employee information.

The Adjudicator determined that the Organization did not have authority to collect, use or disclose the Complainant’s personal information without consent.

Statutes Cited: AB: *Personal Information Protection Act*, S.A. 2003, c. P-6.5, ss. 1, 7, 8, 11, 14, 15, 16, 17, 18, 19, 20, 21, 52.

Authorities Cited: AB: Orders P2005-001, P2006-008.

I. BACKGROUND

[para 1] An individual made a complaint under the *Personal Information Protection Act* (PIPA) that her personal information had been improperly collected, used and disclosed by Sobeys Group

Inc. (the Organization). The Complainant is an employee of the Organization and the alleged collection, use, and disclosure about which the complaint was made occurred while the Complainant was on medical leave.

[para 2] The Complainant states that while she was on medical leave, a foreman with the Organization called her to ask about her absence from work. She states that the foreman had told her that he had her personnel file, and read to her information from the file about her disability claim she had made to her insurance company (the insurer). The Complainant has complained that the foreman should not have had access to her disability claim information.

[para 3] The Complainant also states that she received a call from a friend, who apparently also works for the Organization; the friend told the Complainant that the foreman had asked the friend questions about the Complainant. The friend also told the Complainant that the foreman told the friend that the Complainant's disability claim had been denied. The Complainant has complained that this was not an authorized disclosure of her personal information.

[para 4] The Commissioner authorized an investigation of this complaint. This did not resolve the matter and it was set down for a written inquiry. The Organization has not participated in the inquiry, so the inquiry was conducted without submissions from the Organization.

II. INFORMATION AT ISSUE

[para 5] The information at issue is the information about the Complainant collected, used, and disclosed by the Organization.

III. ISSUES

[para 6] The Notice of Inquiry dated March 13, 2013, states the issues for inquiry as follows:

- 1. Did the Organization collect, use and disclose the Complainant's personal information as that term is defined in section 1(k) of PIPA?**
- 2. Did the Organization collect, use and/or disclose the Complainant's personal information in compliance with, section 7(1) of the Act (no collection, use or disclosure without either authorization or consent)? In particular,**
 - a. Did the Organization have the authority to collect, use and/or disclose the Complainant's personal information without consent, as permitted by sections 14, 17 and 20 of PIPA?**
 - b. Did the Organization have the authority to collect, use and/or 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 15, 18 and 21 were met?**
 - c. If the Organization did not have the authority to collect, use and/or disclose the Complainant's personal information or personal employee information without**

consent, did the Organization obtain the Complainant's consent in accordance with section 8 of the Act before collecting, using and disclosing the information?

- 3. If the Organization is relying on section 8 or sections 14, 17 or 20 did it collect, use or disclose the information in compliance with sections 11(1), 16(1) and 19(1) of PIPA (collection, use and/or disclosure for purposes that are reasonable)?**
- 4. If the Organization is relying on section 8 or sections 14, 17 or 20 did it collect, use or disclose the information in compliance with sections 11(2), 16(2) and 19(2) of PIPA (collection, use and/or disclosure to the extent reasonable for meeting the purposes)?**

[para 7] I will address the subsections of Issue 2 in the following order:

- 2. Did the Organization collect, use and/or disclose the Complainant's personal information in compliance with, section 7(1) of the Act (no collection, use or disclosure without either authorization or consent)? In particular,**
 - a. Did the Organization have the authority to collect, use and/or 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 15, 18 and 21 were met?**
 - b. Did the Organization have the authority to collect, use and/or disclose the Complainant's personal information without consent, as permitted by sections 14, 17 and 20 of PIPA?**
 - c. If the Organization did not have the authority to collect, use and/or disclose the Complainant's personal information or personal employee information without consent, did the Organization obtain the Complainant's consent in accordance with section 8 of the Act before collecting, using and disclosing the information?**

IV. DISCUSSION OF ISSUES

Preliminary issue – amendments to the Act

[para 8] Amendments to PIPA came into force on May 1, 2010. The Complainant indicates in her complaint that the disclosure of information occurred around March 18, 2010. A letter from the Complainant's insurer, related to the collection, use, and disclosure of the Complainant's personal information, is dated March 10, 2010. The complaint made to this office is not dated, but was date stamped May 13, 2010, when it was received by this office.

[para 9] The above-stated facts lead me to conclude that the collection, use, and disclosure of the Complainant's personal information relevant to this inquiry occurred prior to the May 1, 2010 PIPA amendments; therefore the prior version of the Act applies.

Preliminary issue – burden of proof

[para 10] The Complainant has the initial burden of proof, in that she has to adduce some evidence regarding what personal information was collected, used and disclosed, as well as the manner of the collection, use, and disclosure, in order to raise the issue of whether the collection, use, and disclosure was in compliance with the Act. The Organization then has the burden to show that its 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 11] The Complainant has provided me with a copy of a letter sent from her insurer to the Complainant, and copied to the Organization, regarding the Complainant’s denial of disability benefits and brief reasons for the denial. As the Organization has not told me otherwise, I infer that the Organization has collected this information about the Complainant. The Complainant has met her burden of proof with respect to the Organization’s collection of this information.

[para 12] Regarding the use of the Complainant’s information by the foreman and disclosure of the Complainant’s information to her friend, the Complainant has told me about a conversation she had with the foreman, in which he stated that he had her personnel file, and read to her information from the file about her disability claim. She also described a conversation with her named friend, during which the friend told the Complainant that the foreman had told the friend about the denied disability claim. In my view, the Complainant has offered sufficient detail about what information was used and disclosed, and to whom, to meet her initial burden of proof with respect to that use and disclosure.

[para 13] The Organization has not provided any information regarding its use and disclosure of the Complainant’s information.

1. Did the Organization collect, use and disclose the Complainant’s personal information as that term is defined in section 1(k) of PIPA?

[para 14] Section 1(k) states the following:

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

[para 15] The information that in the Complainant’s view was collected, used and disclosed inappropriately by the Organization is information about her medical leave and disability benefits. This is information about the Complainant and therefore meets the definition of personal information under PIPA.

2. Did the Organization collect, use and/or disclose the Complainant’s personal information in compliance with, section 7(1) of the Act (no collection, use or disclosure without either authorization or consent)?

- a. Did the Organization have the authority to collect, use and/or 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 15, 18 and 21 were met?**

[para 16] Section 1(j) defines “personal employee information” 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 17] This definition of personal employee information is context-dependent. In order for personal information to be personal employee information, it must be collected, used, or disclosed solely for the purpose of establishing, managing, or terminating the employment relationship.

[para 18] The information the Complainant alleges was collected and used in contravention of the Act is information related to the Complainant’s medical leave from her job. The Complainant also stated that the foreman disclosed to her friend the fact that the Complainant had been denied her disability claim.

[para 19] The Organization has not provided any information as to its reasons for collecting, using or disclosing information about the Complainant’s medical leave and disability claim. However, as the Complainant was absent from work due to a medical claim, I presume that the Organization collected, used and disclosed that information related to the disability claim in order to manage its employment relationship with the Complainant. The fact that the Complainant’s claim for disability benefits was denied was presumably relevant to determine when the Complainant would be expected to return to work and may have had some bearing on her work duties or other aspects of her employment.

[para 20] I will consider whether the Complainant’s information meets the definition of “personal employee information” in the context of the collection, use, and disclosure of the information, and if so, whether the collection, use, and disclosure of personal employee information was authorized.

Was the collection authorized as a collection of personal employee information?

[para 21] Although I was given no information from the Organization in this regard, I assume that the letter from the insurer to the Organization served as notice to the Organization that the Complainant’s claim was denied. I find this to be so on a balance of probabilities. I conclude that the information about the Complainant’s disability claim is “personal employee information” under the Act for the purposes of the Organization’s collection of that information.

[para 22] Section 15 of the Act authorizes an organization to collect personal employee information without the employee’s consent if certain conditions are met:

15(1) Notwithstanding anything in this Act other than subsection (2), an organization may collect personal employee information about an individual without the consent of the individual if

- (a) *the individual is an employee of the organization, or*
- (b) *the collection of the information is for the purpose of recruiting a potential employee.*
- (2) *An organization shall not collect personal information about an individual under subsection (1) without the consent of the individual unless*
- (a) *the collection is reasonable for the purposes for which the information is being collected,*
- (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 collecting the information, provided the individual with reasonable notification that the information is going to be collected and of the purposes for which the information is going to be collected.*
- (3) *An organization may disclose personal employee information about an individual without the consent of the individual where that information is being disclosed to an organization that is collecting that information under subsection (1).*
- (4) *Nothing in this section is to be construed so as to restrict or otherwise affect an organization's ability to collect personal information under section 14.*

[para 23] In accordance with section 15 of the Act, the Organization would be permitted to collect the Complainant's personal employee information without her consent if:

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

[para 24] The Complainant is an employee of the Organization, per section 15(1)(a). In my view, the fact that the disability claim was denied is information that was reasonably required by the Organization for the reasons discussed above. I find that the Organization met the requirements of section 15(2)(a) and (b).

[para 25] I have no indication that the Organization provided notice to the Complainant that her information would be collected and the purpose for the collection, as required by section 15(2)(c). It may be that the Organization provided notice to the Complainant that certain information is collected from an insurer if disability claims are made. However, without evidence from the Organization on this point, I cannot assume this to be the case. Therefore I find that the Organization did not meet the requirements of section 15. It was therefore not authorized to collect the Complainant's personal employee information without consent under section 15.

[para 26] I have found above that the information is the both the Complainant's personal information and her personal employee information. Even where an organization is not authorized to collect personal employee information under section 15, the organization may be authorized to collect the personal information without consent under section 14. I will therefore consider whether the collection was authorized under section 14, under Issue 2b.

Was the use authorized as a use of personal employee information?

[para 27] An organization may use personal employee information as follows:

18(1) Notwithstanding anything in this Act other than subsection (2), an organization may use personal employee information about an individual without the consent of the individual if

(a) the individual is an employee of the organization, or

(b) the use of the information is for the purpose of recruiting a potential employee.

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

(a) the use is reasonable for the purposes for which the information is being used,

(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 using the information, provided the individual with reasonable notification that the information is going to be used and of the purposes for which the information is going to be used.

(3) Nothing in this section is to be construed so as to restrict or otherwise affect an organization's ability to use personal information under section 17.

[para 28] The Organization used the Complainant's information when the foreman accessed her personnel file and discussed the disability claim status with the Complainant. The Organization has not provided any information regarding its purposes for using the Complainant's information in this way. If the foreman was responsible for ascertaining when the Complainant would return to work, it seems reasonable that the foreman would need to know that the disability claim was denied (in other words, that she would no longer be on disability leave). However, I do not know that this was the foreman's role.

[para 29] Even if the Complainant's information was used by the foreman to manage her employment relationship with the Organization and is therefore personal employee information in the context of the use by the foreman, I find that the use was not authorized under section 18. I do not know why the foreman needed to have access to the letter from the insurer, which contained details as to why the claim was denied or indeed why he would need to have other parts of her personnel file. The Organization has not provided me with any explanation as to why the foreman would reasonably need to know this information. Absent such explanation, I cannot conclude that the use by the foreman of the information in the file, and specifically the information in the letter denying the claim, was reasonable for the purposes for which it was used (assuming it was used to manage the Complainant's employment). It seems to me that it would have been sufficient for the foreman to know that the disability claim had been denied, in order to speak to the Complainant about whether or when she would return to work (if that was the foreman's responsibility).

[para 30] Further, I have no information from the Organization (or Complainant) that the Complainant received notice from the Organization as to how the information about her disability claim would be used by the Organization, as required by section 18(2)(c).

[para 31] I find that the Organization has given no evidence to establish authority for the way the foreman used the Complainant's personal information in her personnel file.

[para 32] Even where an organization is not authorized to use personal information under section 18, the organization may be authorized to use the personal information without consent under section 17. I will therefore consider whether the use was authorized under section 17, under Issue 2b.

Was the disclosure authorized as a disclosure of personal employee information?

[para 33] An organization may disclose personal employee information as follows:

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 34] The foreman disclosed information about the Complainant when the foreman told her friend (and coworker) that the Complainant's claim had been denied. If the foreman is responsible for determining when or whether the Complainant would return to work, it is possible that the foreman made the disclosure to the friend in the course of seeking information from the friend regarding the Complainant's continued absence. Indeed, the Complainant's submission indicates that the foreman was seeking information from the friend regarding the Complainant's continued absence from work. Possibly, the foreman's purpose for disclosing the Complainant's information to the friend was for the purpose of managing the Complainant's employment. However, the Organization did not provide any information about this and as noted above, I have no information regarding the foreman's responsibilities.

[para 35] Even if the foreman disclosed the information about the Complainant to her friend for the purpose of managing the Complainant's employment, that is, in the course of trying to obtain information about the Complainant's plans as to whether she would return to work, it was not reasonable for this purpose to disclose the status of the Complainant's disability claim.

[para 36] As well, I have no information suggesting that the Organization provided notice to the Complainant as required by section 21(2)(c).

[para 37] I find that the disclosure of the Complainant's information by the foreman was not authorized under section 21.

[para 38] Even where an organization is not authorized to disclose personal information under section 21, the organization may be authorized to disclose the personal information without consent under section 20. I will therefore consider whether the disclosure was authorized under section 20, under Issue 2b.

b. Did the Organization have the authority to collect, use and/or disclose the Complainant's personal information without consent, as permitted by sections 14, 17 and 20 of PIPA?

Was collection authorized as a collection of personal information without consent?

[para 39] As I concluded that the Organization did not have authority to collect the Complainant's information under section 15, I will consider whether the Organization had authority to collect the personal information without consent under section 14. Section 14 of PIPA permits an organization to collect personal information without consent in a list of specified circumstances.

[para 40] The Organization has not provided any information regarding its collection of the Complainant's information. In my view, none of the exceptions to consent in section 14 apply in the circumstances. Absent any explanation from the Organization, I cannot find that the Organization had authority to collect the Complainant's personal information without her consent.

Was use authorized as a use of personal information without consent?

[para 41] As I concluded that the Organization did not have authority to use the Complainant's information under section 18, I will consider whether the Organization had authority to use the personal information without consent under section 17. Section 17 of PIPA permits an organization to use personal information without consent in a list of specified circumstances.

[para 42] The Organization has not provided any information regarding its use of the Complainant's information. In my view, none of the exceptions to consent in section 17 apply in the circumstances. Absent any explanation from the Organization, I cannot find that the Organization had authority to use the Complainant's personal information without her consent.

Was disclosure authorized as a disclosure of personal information without consent?

[para 43] As I concluded that the Organization did not have authority to disclose the Complainant's information under section 21, I will consider whether the Organization had authority to disclose the personal information without consent under section 20. This provision permits an organization to disclose personal information without consent in a list of specified listed circumstances.

[para 44] The Organization has not provided any information regarding its disclosure of the Complainant's information. In my view, none of the exceptions to consent in section 20 apply in the circumstances. Absent any explanation from the Organization, I cannot find that the Organization had authority to disclose the Complainant's personal information without her consent.

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

[para 45] Section 8 of PIPA provides the methods of consent contemplated by the Act. The relevant portions are 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.

...

[para 46] The Complainant's objection to the Organization's collection, use, and disclosure of her personal information suggests that she did not consent to the collection, use, or disclosure. It may be that the Complainant signed a consent form when she signed up for her insurance plan through her insurer that gave her employer the authority to collect, use, and disclose personal information (or personal employee information) for stated purposes; however, without evidence from the Organization I cannot assume this to be the case. I therefore find that the Organization did not have consent from the Complainant to collect, use, or disclose her personal information.

- 3. If the Organization is relying on section 8 or sections 14, 17 or 20 did it collect, use or disclose the information in compliance with sections 11(1), 16(1) and 19(1) of PIPA (collection, use and/or disclosure for purposes that are reasonable)?**

[para 47] The Organization has not provided me with any information about its purposes for collecting, using or disclosing the Complainant's information. Although I can speculate what purposes the Organization may have had for collecting, using, and disclosing the Complainant's information, I do not know *in fact* that those are the purposes. I cannot conclude that the Organization's purposes are reasonable without information from the Organization as to what the purposes are in fact.

- 4. If the Organization is relying on section 8 or sections 14, 17 or 20 did it collect, use or disclose the information in compliance with sections 11(2), 16(2) and 19(2) of PIPA (collection, use and/or disclosure to the extent reasonable for meeting the purposes)?**

[para 48] As the Organization has not provided me with its purposes for collecting, using or disclosing the Complainant's information, I cannot conclude that the collection, use, or disclosure was reasonable for the purpose for which it was done.

V. ORDER

[para 49] I make this Order under section 52 of the Act.

[para 50] I find that the Organization has not established that it has met the requirements for collection of personal employee information under section 15(2)(c) of providing adequate notice. I order the Organization to fulfill its obligations under that section or to stop collecting the Complainant's personal employee information.

[para 51] I find that the Organization did not have authority to use or disclose the Complainant's personal employee information or personal information in the manner that is discussed in this Order. I order the Organization to stop using and disclosing the Complainant's personal information in this way.

[para 52] I further order the Organization to notify me and the Complainant, in writing, within 50 days of receiving a copy of this Order that it has complied with the Order.

Amanda Swanek
Adjudicator