

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER P2013-09

December 19, 2013

THE LEGAL AID SOCIETY OF ALBERTA

Case File Number P2034

Office URL: www.oipc.ab.ca

Summary: The Applicant asked The Legal Aid Society of Alberta (the “Organization”) for information about its use and disclosure of his personal information, as contemplated by section 24(1)(b) of the *Personal Information Protection Act* (the “Act”). He also asked for certain records containing his personal information, as contemplated by section 24(1)(a). He requested a review of the Organization’s response, alleging that it had failed to seek clarification as to what he was requesting, had failed to provide the requested information about the use and disclosure of his personal information, and had failed to provide some of the records requested by him.

An organization’s duty to assist under section 27(1)(a) of the Act includes the obligation to clarify an applicant’s request, if the situation calls for clarification. The Adjudicator found that the Organization was not required to seek clarification from the Applicant in this case. An organization’s duty to assist also includes the obligation to adequately search for records requested by an applicant. The Adjudicator found that the Organization had done so in this case. He confirmed that the Organization had met its duty to assist the Applicant.

Section 24(1.2)(a) of the Act requires an organization to provide an applicant with information about the purposes for which his or her personal information has been and is being used by the organization. The Adjudicator found that the Organization had complied with this duty. While the Applicant argued that the Organization was too general in its response, the Adjudicator found that it had sufficiently specified the

purposes in question. While the Applicant alleged that the Organization had used his personal information for purposes not indicated by it, the Adjudicator found that it had not. The Adjudicator confirmed that the Organization had met its duty to provide the Applicant with the information contemplated by sections 24(1.2)(a) of the Act.

Section 24(1.2)(b) requires an organization to provide an applicant with the names, if any, of the persons to whom his or her personal information has been and is being disclosed and the circumstances, if any, in which his or her personal information has been and is being disclosed. While the Applicant alleged that the Organization had disclosed his personal information, the Adjudicator found that it had not. As the Organization did not disclose the Applicant's personal information, the Adjudicator found that it had no duty to provide the Applicant with any information under section 24(1.2)(b) of PIPA.

Statutes Cited: AB: *Personal Information Protection Act*, S.A. 2003, c. P-6.5, ss. 4(3), 24, 24(1)(a), 24(1)(b), 24(1.2), 24(1.2)(a), 24(1.2)(b), 27(1), 27(1)(a), 52, 52(3)(a), 56(1)(a), 56(1)(b) and 56(3); *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, s. 10(1).

Orders and Decision Cited: AB: Orders F2013-07, P2009-005 and P2010-002; Decision P2013-D-01.

I. BACKGROUND

[para 1] The Applicant sought assistance from The Legal Aid Society of Alberta (the "Organization") with respect to a legal matter in 2011. He was denied legal representation, but was provided with limited legal advice and referral information. He had also previously sought coverage for legal representation for a matter in 2008, and was provided with some legal services but not legal representation.

[para 2] By letter dated October 3, 2011, the Applicant made the following requests to the Organization under the *Personal Information Protection Act* (the "Act" or "PIPA"):

- 1. I seek access to all computer generated notes created by staff lawyer [name] during my consultation with him on Monday, September 19, 2011 for the purpose of securing legal assistance of Legal Aid Alberta for a Federal Court of Appeal matter.*
- 2. I seek access to personal information related to the internal sharing, if any, of the full contents of the file created on me for this matter with all persons at Legal Aid Alberta.*
- 3. I seek access to the possible external sharing, if any, of the full contents of this file with third parties outside Legal Aid Alberta but within the Departments of Alberta Minister of Justice and Attorney General, and Alberta Solicitor General and Public Security or otherwise.*

4. I seek access to specific instruction(s), if any, received of persons at either Alberta Minister of Justice and Attorney General, or Alberta Solicitor General and Public Security or otherwise concerning me.

5. I seek access to the full contents of computer generated and hand written notes created by the Southern Appeals Committee concerning my application for Legal Aid coverage for a medical malpractice lawsuit in 2008.

[para 3] The Organization responded to the Applicant's requests by letter dated October 28, 2011. In response to item 1 above, it gave the Applicant a copy of the staff lawyer's notes from the meeting of September 19, 2011. For item 2, it informed the Applicant that his personal information had been used internally to make decisions about what information, referrals, services and legal advice to provide him, as summarized in a Service Plan that had been given to him earlier. For item 3, the Organization told the Applicant that it had not disclosed his personal information to the government departments in question. For item 4, it indicated that it had not collected any personal information of the Applicant from any source other than the Applicant himself. In response to item 5, the Organization gave the Applicant a copy of records, although they were from the Northern Appeals Committee, not the Southern one, as the Northern Appeals Committee was the one that had been involved with the Applicant's application in relation to the lawsuit in question.

[para 4] In a form dated November 6, 2011, the Applicant requested a review by this Office of the Organization's response to him.

[para 5] The Organization is a "non-profit organization" within the terms of section 56(1)(b) of PIPA. For such non-profit organizations, section 56(3) states that the Act applies only in the case of personal information that is collected, used or disclosed by them in connection with a "commercial activity", as defined in section 56(1)(a). The former Commissioner therefore decided to first proceed with the preliminary issue of whether this Office has jurisdiction over the matters raised in the Applicant's request for review. If it were concluded that this Office has jurisdiction, a further inquiry into the substance of the matters raised by the Applicant would proceed.

[para 6] In Decision P2013-D-01 issued on February 8, 2013, I concluded that when the Organization collected, used and/or disclosed the Applicant's personal information, it did so in connection with a commercial activity that it was carrying out, and that the Act applies. I also concluded that the collection, use and disclosure of the Applicant's personal information were not excluded from the application of the Act by virtue of section 4(3). This Office therefore has jurisdiction to review the Applicant's concerns regarding the Organization's response to him.

II. INFORMATION AT ISSUE

[para 7] The information at issue in this inquiry consists of information about the "sharing" of the Applicant's personal information inside and outside the Organization, as worded in his letter of October 3, 2011 to the Organization. In the context of PIPA, this

is “information about the use or disclosure” of the Applicant’s personal information within the terms of section 24(1)(b).

[para 8] The information at issue does not include information responsive to the Applicant’s requests for access to the computer-generated notes of the staff lawyer set out in item 1 of his letter, any specific instructions received from Alberta Justice and from Alberta Solicitor General and Public Security (now known, together, as Alberta Justice and Solicitor General) set out in item 4, or the computer-generated and handwritten notes of the Appeals Committee set out in item 5. The Organization provided all of the information that was requested in items 1 and 5, and located no information in response to item 4. Having said this, the Applicant raised a concern, in his request for review, about his request for the specific instructions, alleging that the Organization had failed to seek clarification from him as to what he was requesting. I will address this in the Order below. To the extent that the Applicant also meant to question the adequacy of the Organization’s search for any specific instructions, I will also address this. Finally, I will address a concern on the part of the Applicant that the Organization did not adequately search for the records of the Appeals Committee, even though he raised this late in his inquiry submissions.

[para 9] In his inquiry submissions, the Applicant also alleges that the Organization failed to give him access to other of his personal information, such as that held by staff lawyers apart from the one he met on September 19, 2011, a referral letter sent to an outside solicitor in 2007, complaints that he sent to management, and records pertaining to requests for legal aid coverage that he made in 2006 and 2007, as opposed to 2008 and 2011. However, the Applicant did not make an access request for any of this other information in his letter of October 3, 2011. It is therefore not at issue in this inquiry. Despite this, I will later address the Applicant’s concern that he was not given information held by other staff lawyers in relation to his 2011 matter, as it is arguable that he requested this, even though I find, in the end, that he did not.

III. ISSUES

[para 10] The Notice of Inquiry dated April 23, 2013, which was followed by a correction to certain section references on April 30, 2013, set out the following issues:

Did the Organization comply with section 27(1)(a) of the Act (duty to assist, including duty to seek clarification, if applicable)?

If the Organization used the Applicant’s personal information, did it comply with section 24(1.2)(a) of the Act (provide purposes for which information used)?

If the Organization disclosed the Applicant’s personal information, did it comply with section 24(1.2)(b) of the Act (provide names to whom and circumstances in which personal information disclosed)?

IV. DISCUSSION OF ISSUES

A. Did the Organization comply with section 27(1)(a) of the Act (duty to assist, including duty to seek clarification, if applicable)?

[para 11] Section 27(1)(a) of PIPA reads as follows:

27(1) An organization must

(a) make every reasonable effort

(i) to assist applicants, and

(ii) to respond to each applicant as accurately and completely as reasonably possible,

Section 27(1)(a) sets out an organization's duty to assist an applicant. The duty to assist includes the obligation to clarify an applicant's request, if the situation calls for clarification (Order F2013-07 at para. 12, citing section 10(1) of the *Freedom of Information and Protection of Privacy Act*, which is analogous to section 27(1) of PIPA).

[para 12] In his request for review, the Applicant alleged that the Organization had failed to seek clarification from him regarding item 2 of his request of October 3, 2011. In its response of October 28, 2011, the Organization had indicated that PIPA permitted the Applicant to have access to, and to know about the use or disclosure of, his own personal information only, not the personal information of staff of the Organization. The Applicant took the position that the Organization should have contacted him to determine whether he was requesting his own personal information as opposed to that of any third party.

[para 13] I find that the Organization was not required to seek clarification in this regard. Section 24(1)(a) of PIPA allows an applicant to request access to his or her own personal information only. Therefore, to the extent that the Applicant was, by way of item 2, requesting access to information within the terms of section 24(1)(a), he was indeed entitled to only his own personal information, making it unnecessary for the Organization to know whether he was, in fact, requesting the personal information of its staff. Further, for reasons explained later in this Order, item 2 is properly construed as the Applicant's request for information about the use and disclosure of his personal information, within the terms of section 24(1)(b), reproduced below. I take the Organization to have understood that this was what was being requested, thereby requiring no clarification.

[para 14] In his request for review, the Applicant also took the position that the Organization should have consulted with him regarding item 4 of his request. In its response of October 28, 2011, the Organization had noted that its receipt of specific instructions from a government department would amount to a collection of the

Applicant's personal information within the terms of PIPA. The Applicant alleged that it was wrong for the Organization to treat the provision of instructions from a third party as a collection by the Organization from that third party, at least not before first seeking clarification from him. However, the Organization was correct in characterizing its receipt of information from a government department as a "collection". The fact that this would constitute a collection was apparent and required no clarification.

[para 15] Given the foregoing, I find that the Organization was not required to seek clarification from the Applicant as to what he was requesting in his letter of October 3, 2011.

[para 16] An organization's duty to assist under section 27(1)(a) of PIPA also includes the obligation to conduct an adequate search for records responsive to an applicant's access request (Order P2009-005 at para. 17). The Applicant did not squarely raise the adequacy of the Organization's search for records in his request for review, but I will nonetheless address the concerns he now raises in his inquiry submissions. He says that the Organization searched for the wrong information and he refers to what he was seeking at various points. However, as I noted earlier in this Order, his letter of October 3, 2011 cannot in any way be construed as including a request for much of this other information, such as a referral letter sent to an outside solicitor in 2007, complaints that he sent to management, or records pertaining to requests for legal aid coverage that he made in 2006 and 2007.

[para 17] Having said this, it is arguable that the Applicant's reference to "the full contents of the file created on me for this matter", as set out in item 2 of his letter, was a request for access to his personal information held by other staff lawyers in relation to the 2011 matter, and not just the notes of the staff lawyer that he met on September 19, 2011. However, even if this were the case, the Organization has explained that there was no such additional responsive information, in any event. Since 2010, all records associated with a client file are stored and maintained by the Organization on a central electronic storage system, which is searchable using the client's name. In her affidavit, the Organization's Privacy Officer states that the electronic file may include records generated by staff either at intake or when providing legal services. With respect to the 2011 matter, she states that the electronic file consisted of the Applicant's application for legal assistance in September 2011. In its rebuttal submission, the Organization expands on this by indicating that if the Applicant was seeking records, as opposed to information about the use or disclosure of his personal information, the Organization provided all responsive information where it existed.

[para 18] I take all of the foregoing to mean that the only personal information of the Applicant generated by the Organization's staff lawyers in relation to the Applicant's 2011 matter was that contained in the notes of the staff lawyer who met with him on September 19, 2011. That lawyer is the one who conducted the intake of the Applicant's file as well as the one who presumably provided the limited legal services to him in the form of advice and referral. The Applicant himself indicates that he only ever dealt with this particular lawyer. I find that the Organization conducted an adequate search for

other personal information of the Applicant in relation to his 2011 matter, which may have been generated by other staff lawyers, but found none.

[para 19] For similar reasons, I find that the Organization adequately searched for any specific instructions received from Alberta Justice and Solicitor General, as set out in item 4 of the Applicant's request. Given the Organization's evidence and submissions, such information would have been located on its central electronic storage system for matters after 2010, but no such information was found there. For matters pre-dating 2010, the Organization's Privacy Officer explains that information is located in a physical file that can be located by using a different electronic application. She says that she located all of the Applicant's files, whether stored electronically or physically, and found no instructions from Alberta Justice and Solicitor General.

[para 20] Finally, the Applicant says that the Organization failed to provide the information that he sought in item 5 of his letter of October 3, 2011, being records created by the Southern Appeals Committee concerning his application for legal aid coverage for a medical malpractice lawsuit in 2008. The Organization's Privacy Officer says that she located the physical file dealing with this lawsuit. In turn, the Organization explains that this matter was addressed by the Northern Appeals Committee, not the Southern one, and that it provided the Northern Appeals Committee's records to the Applicant. I have no reason to believe that the Organization is mistaken about which specific Committee dealt with the Applicant's 2008 matter, given that it would have a record of which Committee was involved. Rather, it must be the Applicant who is mistaken. While he believes that the Southern Appeals Committee dealt with his appeal, he provides no evidence to support this belief.

[para 21] Given the foregoing, I find that the Organization adequately searched for the records containing the Applicant's personal information, as requested by him.

[para 22] I conclude that the Organization met its duty to assist the Applicant under section 27(1)(a) of PIPA.

- B. If the Organization used the Applicant's personal information, did it comply with section 24(1.2)(a) of the Act (provide purposes for which information used)?**

- C. If the Organization disclosed the Applicant's personal information, did it comply with section 24(1.2)(b) of the Act (provide names to whom and circumstances in which personal information disclosed)?**

[para 23] Section 24 of PIPA reads, in part, as follows:

24(1) An individual may, in accordance with section 26, request an organization
...

(b) to provide the individual with information about the use or disclosure of personal information about the individual.

...

(1.2) On the request of an applicant made under subsection (1)(b), and taking into consideration what is reasonable, an organization must, if the organization has in its custody or under its control a record containing personal information about the applicant described in the request, provide the applicant with

(a) information about the purposes for which the personal information has been and is being used by the organization, and

(b) the names of the persons to whom and circumstances in which the personal information has been and is being disclosed.

[para 24] Section 24(1.2) applies where an organization has in its custody or under its control a record containing personal information about an applicant described in the applicant's request to the organization. In this case, the Organization had records containing the Applicant's personal information in response to items 1 and 5 of his request of October 3, 2011.

[para 25] In addition, to engage section 24(1.2), an applicant must actually request that the organization provide information about the use or disclosure of the applicant's personal information, in accordance with section 24(1)(b). The Organization argues that the Applicant's letter of October 3, 2011 did not include a request for information about the use or disclosure of his personal information. However, its own letter of October 28, 2011 contemplated that the Applicant was requesting information about the use or disclosure of his personal information. The letter highlighted, or bolded, the relevant portion of section 24(1)(b) and provided information about the Organization's use and disclosure of the Applicant's personal information in reference to that section. While the Organization wrote that it was providing this part of its response "if" the Applicant happened to be making a request under section 24(1)(b), it nonetheless characterized the Applicant's request as such. I also agree with the Applicant, in reference to the issue discussed in the preceding section of this Order, that the Organization cannot have it both ways; either it understood what he was requesting and required no clarification from him, or it did not understand what he was requesting and should have sought clarification.

[para 26] Regardless of the Organization's own characterization of items 2 and 3 of the Applicant's request, I find that they were, in fact, requests within the terms of section 24(1)(b). While the Applicant wrote in item 2 that he was seeking "access to personal information", this was information "related to the internal sharing" of his file. I take him to have been seeking information about the sharing of his personal information, not the contents of the file itself or any other of his personal information, despite his initial reference. This becomes more apparent on review of item 3, where the Applicant sought access to (i.e., information about) the "possible external sharing" of his file. Again, he did not ask for the file itself, but was effectively asking whether his file had been shared

with outside entities. Finally, given that items 2 and 3 of the Applicant's request referred to the internal sharing of the file created in relation to him for "this matter" and to the external sharing of "this file", his request for information about the use and disclosure of his personal information related only to the matter first set out in item 1 of his letter of October 3, 2011, being the 2011 matter.

1. Information about the purposes for which the Applicant's personal information had been used by the Organization

[para 27] Section 24(1.2)(a) required the Organization to provide the Applicant with information about the purposes for which his personal information had been and was being used by the Organization. In response to item 2 of the Applicant's request of October 3, 2011, the Organization indicated that his personal information had been used to make decisions about what information, referrals, services and legal advice to provide him, as summarized in a Service Plan that had been given to him earlier.

[para 28] The Applicant submits that the Organization should have been more "specific" or "precise" in its indication of the purposes for which his personal information had been used. He argues that the Organization failed to provide "sufficient details" regarding its use of his personal information, and that its response was too "general", "abstract" and "vague". However, I find that the Organization sufficiently articulated the purposes for which it had used the Applicant's personal information. No further detail was required. Its response was to the effect that it had used the Applicant's personal information in order to make decisions about his eligibility for legal services, whether in the form of providing information or legal advice, or referring him elsewhere for assistance. The Applicant argues that he should have been told the "manner" in which his personal information was used but, as noted by the Organization, section 24(1.2)(a) requires only that it state the "purposes".

[para 29] The Applicant also suggests that his personal information was used by the Organization in ways not indicated by it. He suggests that there was a "secret processing" of his personal information by the Organization prior to deciding whether to offer him legal services or determining the merits of his legal cases. He suggests that the Organization used his personal information to search government databases. He believes that this negatively affected the outcome of his application for legal services, was injurious to his rights and interests, and improperly influenced the Organization's decision about whether he was entitled to legal coverage. In short, he thinks that he has been "blacklisted".

[para 30] I find that the Applicant is merely speculating as to additional purposes for which his personal information was used by the Organization. He refers to the "prospect" of his personal information being inappropriately shared, the "possible" use of his personal information to access secret data files, and the "potential" that his personal information obtained from outside sources was placed before the person deciding whether to provide him with legal aid coverage. Conversely, the Organization repeatedly says that it used the Applicant's personal information only internally to decide whether

he was eligible for legal aid coverage. I have no reason to believe otherwise, despite the Applicant's suspicions.

[para 31] I conclude that the Organization's response to the Applicant, regarding the use of his personal information, satisfied the requirements of section 24(1.2)(a) of PIPA.

2. Names of the persons to whom and circumstances in which the Applicant's personal information had been disclosed

[para 32] Section 24(1.2)(b) required the Organization to provide the Applicant with the names, if any, of the persons to whom his personal information had been and was being disclosed and the circumstances, if any, in which his personal information had been and was being disclosed. In response to item 3 of his request of October 3, 2011, the Organization told the Applicant that it had not disclosed his personal information to what is now Alberta Justice and Solicitor General.

[para 33] As I noted in Decision P2013-D-01 (at para. 7), the Applicant did not raise any concerns, in his request for review, about the Organization's response to item 3 of his request. While he set out a concern in relation to his "third request", the concern was really directed at his fourth request regarding the "provision of instructions" to the Organization by other bodies, which I discussed above, noting that the Organization was correct in calling this a collection. I further note, at this juncture, that neither section 24(1)(b) nor section 24(1.2) entitles an applicant to information about the collection of his or her personal information by an organization, but rather only about the use and disclosure of his or her personal information by the organization.

[para 34] Despite the scope of his request for review, the Applicant raises concerns in his inquiry submissions about the Organization's possible "external sharing" of his personal information with Alberta Justice and Solicitor General, arguing that the Organization's response about the disclosure of his personal information did not comply with section 24(1.2)(b). In his request for review, the Applicant also raised a concern in relation to item 2 of his letter to the Organization, in which he asked for information about the "internal sharing" of his file. For the purpose of fully addressing the above issue, I make the following findings in response to the Applicant's concerns, regardless of when he raised them.

[para 35] In response to the Applicant's question about the external sharing of his personal information, the Organization told him that it had not disclosed his personal information to Alberta Justice and Solicitor General. It further noted, in its letter of October 28, 2011, that the Applicant's request about the internal sharing of his personal information was about the "use" of his personal information. In responding in this manner, the Organization appears to be taking the position that a disclosure of personal information by an organization occurs only when the information is transferred outside, not inside, the organization.

[para 36] An Order of this Office has suggested that there can be a disclosure of personal information inside, and not only outside, an Organization (Order P2010-002 at para. 10). This same Order (also at para. 10) states that there is a “disclosure” of personal information when “it is transferred within the organization to another person or sector for a purpose different from the one for which it was originally collected”. Conversely, the Order (at para. 9) states that an organization’s internal transfer of personal information is a “use” when the information “is transferred within the organization to another person or sector for the same purpose for which it is collected”.

[para 37] The Applicant argues that the Organization failed to inform him of the names of other staff lawyers who learned his personal information, whether of similar or higher rank to the one with whom he dealt directly. He says that the staff lawyer that he met on September 19, 2011 must have consulted with his colleagues or supervisor. The Organization responds that the Applicant’s personal information was transferred within the Organization for the same purpose for which it was collected, that is, to determine his eligibility for legal services, including representation in legal proceedings, provision of legal advice and referrals to other agencies and legal providers. Therefore, regardless of whether an internal transfer of personal information by an organization is always a “use”, or is a “use” only when it is transferred for the same purpose for which it was collected, I find that there was only a use of the personal information of the Applicant by the Organization in this case. There were no disclosures, whether external or internal. As section 24(1.2)(b) requires an organization to provide the names of persons to whom personal information has been “disclosed”, there are no such names for the Organization to provide in this case. It has no obligation to provide the names of persons with whom the Applicant’s personal information may have been shared internally.

[para 38] The Applicant raises the possibility that his personal information may have been transferred inside or outside the Organization for a variety of purposes unrelated to making the decision about his eligibility for legal services from the Organization, or shared with a variety of persons who should not have been involved in that decision. He thinks that his file was accessed at remote locations by third parties in government or the courts. However, for the same reasons set out in the preceding part of this Order, I find that all of this is mere speculation on the Applicant’s part. The Organization says that its staff did not contact government databases or third party sources in relation to the matters set out in the Applicant’s letter of October 3, 2011. As the Organization is in the better position to know the actions of its staff, and I have no reason to believe that it is being untruthful in the face of the Applicant’s assertions, I again prefer to accept the Organization’s version of events. The Applicant provides no evidence to support the possibility that his personal information was disclosed in ways not admitted by the Organization.

[para 39] As I find that the Organization did not disclose the Applicant’s personal information, it had no duty to provide the Applicant with any information under section 24(1.2)(b) of PIPA.

V. ORDER

[para 40] I make this Order under section 52 of PIPA.

[para 41] I find that the Organization was not required to seek clarification from the Applicant regarding the nature of the requests set out in his letter of October 3, 2011. I also find that it conducted an adequate search for the Applicant's personal information, as requested by him. The Organization therefore complied with section 27(1)(a) of PIPA. Under section 52(3)(a), I confirm that the Organization performed its duty to make every reasonable effort to assist the Applicant.

[para 42] I find that the Organization properly provided the Applicant with information about the purposes for which his personal information had been used by the Organization, and that it therefore complied with section 24(1.2)(a) of PIPA. Under section 52(3)(a), I confirm that the Organization performed its duty in this regard.

[para 43] I find that the Organization did not disclose the Applicant's personal information, and that it therefore had no duty to provide the Applicant with any information under section 24(1.2)(b) of PIPA.

Wade Raaflaub
Adjudicator