

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER P2015-03

April 30, 2015

PRIMERICA FINANCIAL SERVICES LTD.

Case File Numbers P1632 and P1712

Office URL: www.oipc.ab.ca

Summary: An individual made an access request to Primerica Financial Services Ltd. (the Organization). She was both a former employee and a client of the Organization. The Organization provided a large volume of documents, and withheld others. The Applicant took issue with the reasons given by the Organization for withholding records. She also questioned the Organization's claim that they no longer had documents in their possession.

The Adjudicator found that the Organization had properly withheld most documents and that it had complied with its obligations under the *Personal Information Protection Act* (PIPA) to assist the Applicant.

Statutes Cited: AB: *Personal Information Protection Act*, R.S.A. 2003, c. P-6.5, ss. 1, 2, 3, 5, 24, 27, 35, 52.

Authorities Cited: AB: Orders P2006-004, P2011-D-003, P2012-08, P2012-09

I. BACKGROUND

[para 1] This inquiry arises from a request for information by the Applicant. The request consisted of a list of specified items of information related to the Applicant's performance of duties as an agent of the Organization, as well as to her dealings with the Organization as its client.

[para 2] The Applicant requested a review of the Organization's responses, disputing the Organization's position as to what information was the Applicant's personal information, disputing exceptions the Organization had applied, and disputing that the Organization had complied with the duty to assist and conduct an adequate search under section 27(1)(a) of the *Personal Information Protection Act* (PIPA or the Act). She asserted in particular that she did not believe all responsive records had been destroyed in 2007 (prior to her request).

II. INFORMATION AT ISSUE

[para 3] The Organization, in both its submissions to this inquiry and in response to the access request by the Applicant, supplied a chart that lists the documents requested and the response to that request by the Organization.

[para 4] There are four categories of documents that are being withheld by the Organization.

- a. Pre-licensing/Licensing documents (Document Chart #11)
Withheld as not personal information as defined in section 1(1)(k) of the Act
- b. Contract Change Forms (Document Chart #3)
Withheld under section 24(2)(b) of the Act
- c. Contents of Personnel File from "G" Branch and Home Office, PFS HQ (Document Chart #20)
Withheld under section 24(2)(c) of the Act
- d. All paperwork, files and notes from all Uplines and Primerica personnel (Document Chart #23)
Withheld under section 24(2)(c) of the Act

[para 5] In a request for access to information under PIPA, only records consisting of the requestor's personal information can be requested. In some inquiries, as in this one, the records identified by the Organization as responsive to the Applicant's request do not all consist of personal information. However, such records are at issue since determinations must be made in the inquiry as to whether they do consist of the Applicant's personal information.

III. ISSUES

[para 6] The Notice of Inquiry, dated October 10, 2014, set out the following issues:

- 1. Is the access request for the Applicant's personal information? Was the information in the withheld records, or any of it, responsive to the Applicant's request for her personal information?**

2. **Did the Organization refuse to provide access to the Applicant's personal information in its custody or control?**
3. **If the Organization refused to provide access to the Applicant's personal information in its custody or control, did it do so in accordance with section 24(2) (discretionary grounds for refusal) or with section 24(3) (mandatory grounds for refusal)? In particular,**
 - a. **Did the Organization properly apply section 24(2)(b) (confidential information of a commercial nature) to certain requested records or parts thereof?**
 - b. **Did the Organization properly apply section 24(2)(c) (information collected for an investigation or legal proceeding) to certain requested records or parts thereof?**
 - c. **Does section 24(3)(b) (information revealing personal information about another individual) apply to certain requested records or parts thereof?**
4. **If the withheld records contain or consist of personal information of the Applicant, and if section 24(2)(b) applies to these records, is the Organization reasonably able to sever the information to which this section applies, and provide the personal information of the Applicant, as required by section 24(4)?**
5. **Did the Organization comply with section 27(1)(a) of the Act (duty to assist including duty to conduct an adequate search for responsive records)?**

When the issues at inquiry include adequacy of search, it is helpful for the Organization to include a sworn document regarding the search conducted for records responsive to the Applicant's access request. In preparing the sworn document, the Organization may wish to consider addressing the following:

- **The specific steps taken by the Organization to identify and locate records responsive to the Applicant's access request.**
- **The scope of the search conducted, such as physical sites, program areas, specific databases, off-site storage areas, etc.**
- **The steps taken to identify and locate all possible repositories where there may be records relevant to the access request: keyword searches, records retention and disposition schedules, etc.**
- **Who did the search? (Note: that person or persons is the best person to provide the direct evidence).**
- **Why the Organization believes no more responsive records exist other than what has been found or produced.**

- **Any other relevant information.**

[para 7] In her submission to the inquiry, the Applicant attaches six documents that she labels “evidence”. The Applicant puts two of these documents forward as containing her personal information that was collected by the Organization. Another two documents are advanced in support of her contention that the Organization is being misleading when they assert that documents were destroyed after she was terminated. The final two documents are an excerpt from a Primerica Form regarding compliance and a Voluntary Desk Agreement Form.

[para 8] The Applicant submits as evidence a memo (her #6) addressed to “All Voluntary Desk Agreement Holders”. She asks the question:

Why were agents specifically instructed to make money orders and personal cheques payable to “x” instead of “y”?

[para 9] The Applicant, in her submissions, under the heading “Other issues and questions” asks questions such as the following:

What is meant by “senior management?”

What laws, regulations, or rules does Primerica rely on (or adhere to) that

- requires Primerica to hold these ACMs?
- requires licensed reps to attend these ACMs (or lose their licenses and contracts)?
- requires licensed reps to initial Compliance Checklists and sign Compliance Declarations?

[para 10] Section 24 of the Act allows the Applicant to make an access request, but limits that request to records containing her own personal information.

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

- (a) to provide the individual with access to personal information about the individual, or*
- (b) to provide the individual with information about the use or disclosure of personal information about the individual.*

[para 11] The Applicant’s questions, described at paras 8 and 9, will not be dealt with by this inquiry. The Notice of Inquiry sent to the Applicant and the Organization set out the issues that will be examined. The questions listed in the Applicant’s submissions fall outside of the scope not only of the inquiry, but also of the Act. The Organization does not have an obligation, under the Act, to answer general questions or to provide an applicant with general information.

IV. DISCUSSION OF ISSUES

[para 12] The Applicant, in her request to the Organization for information under the Act, provided a list of four pages of specific records to which she wanted access. The

Organization provided her with some records and a chart that outlined the reasons certain documents were not being produced to the Applicant. It said that some of the documents requested no longer exist, some were being withheld for confidential commercial reasons (section 24(2)(b)), some were being withheld for not disclosing personal information of the Applicant, and some because the information was collected during the course of an investigation (section 24(2)(c)).

- 1. Is the access request for the Applicant’s personal information? Was the information in the withheld records, or any of it, responsive to the Applicant’s request for her personal information?**
- 2. Did the Organization refuse to provide access to the Applicant’s personal information in its custody or control?**

[para 13] As noted above, an applicant can make an access request under PIPA only for their own personal information. The first issue in the inquiry is therefore which parts of the information the Organization identified as records which the Applicant asked for actually consist of her personal information.

[para 14] “Personal information” is defined in section 1(1)(k) of the Act, which reads as follows:

1(1) In this Act,

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

[para 15] In Order P2006-004 it states:

The Act defines “personal information” as “information about an identifiable individual”. In my view, “about” in the context of this phrase is a highly significant restrictive modifier. “About an applicant” is a much narrower idea than “related to an Applicant”. Information that is generated or collected in consequence of a complaint or some other action on the part of or associated with an applicant – and that is therefore connected to them in some way – is not necessarily “about” that person.

This reasoning applies equally to an individual’s work, which may be associated with an individual, but is not necessarily about the individual who performed the work.

...

These records are not about the employee as an individual, but about the task at hand.

[para 16] In Order P2006-005, paragraph 44, the former Commissioner held that in order for information to be considered personal information, the information must be “about” the individual, as opposed to “by” the individual or associated with the individual.

The relationship between the Organization and the Applicant

[para 17] With regard to whether the requested information is personal or not, the Organization made arguments about the status of the Applicant as either an independent contractor for the Organization, or its employee, and offered documents that shed light on this relationship. These arguments and evidence were presumably provided on the premise they have some bearing on whether records that document her performance of work are or are not the Applicant's personal information.

[para 18] I do not need to make a finding about the nature of that relationship. If the records in the hands of the Organization document work performance that has no personal dimension, they are not personal information regardless of the proper characterization of the relationship between the Applicant and the Organization.

Pre-licensing and licensing documents

[para 19] The Organization did not supply the Applicant with various documents for Pre-Licensing and Licensing, on the basis that these records do not contain any information related to the Applicant or did not have a personal dimension as contemplated in the Act. (In the document chart provided to me, these records are listed under category #11.)

[para 20] These records include items such as course materials, practice exams, study guides and licensing registration. These were documents that relate only to positions within the Organization rather than to an individual. They relate to "sales representatives", not to the Applicant personally. The documents were created to assist employees in their roles within the Organization. There is nothing about the Applicant personally in the documents. I find that these records do not contain the personal information of the Applicant and the Organization did not have a duty to disclose these documents.

"Evidence #5" "Supervision and Compliance" documents

[para 21] The Applicant submits that her document labelled "Evidence #5" and entitled "Supervision and Compliance" shows that she was required, as part of her contract with Primerica, to attend Annual Compliance Meetings. She submits that she should be given copies of the documents she signed acknowledging her attendance at these meetings.

[para 22] In Order P2012-09, the Adjudicator commented that not all the information in an individual's personnel file is about the individual, such that it could be said to be "personal information". She said:

As noted, some of the records provided to the Applicant contain no information at all about her; the fact that these records may have been located in the Applicant's personnel file does not necessarily mean that they contain her personal information under PIPA. Even the records that contain the Applicant's name are not subject to an access request under PIPA where they contain no "personal dimension." For example, as the Applicant's position with the Organization

required certain safety training, some of the records provided to the Applicant by the Organization were training materials (for example, pages 622-649 consist of an operator training manual). The Organization's training manuals cannot be characterized as the Applicant's personal information. This is the case even in the instances wherein the training materials included quizzes with the Applicant's answers, as well as her signature affirming that she had read the materials, as there is no personal dimension to the information in these records. I make the same finding with respect to copies of organization-wide policy memos and records of work-related meetings and attendance at those meetings.

[para 23] Attendance at a meeting could in some circumstances have a personal dimension. In the present case, however, it appears the Applicant attended the meetings for work-related purposes, and she has said nothing about that suggests her attendance would have had a personal dimension. Therefore I find these records do not consist of the Applicant's personal information.

“Evidence #2” “contract change form”

[para 24] The Applicant submitted a document labelled “Evidence #2”. It is titled “contract change form”. The Applicant asserts that since every person whose name is written in the “PFA Name” is entitled to a yellow copy, when her name appears in that field, the information is about her and therefore the Organization would be required to provide her with copies.

[para 25] The Organization refused to provide documents that were entitled “Contract Change Forms” and were listed as #3 in their document chart. The Organization relied on section 24(2)(b) (confidential information of a commercial nature) as a basis for withholding the documents.

[para 26] However, these records do not consist of the Applicant's personal information. Upon review of these documents, I determine that they contain information relating to methods of distributing funds to certain individuals within the Organization. The Applicant's name appears on the document as part of the distribution scheme as a “PFA Agent”. The document lists various options for changes to the distribution and also lists names, signatures and positions of the people authorizing the changes. There are no amounts listed on the document and there is nothing within the document that relates to the Applicant personally.

Chart #s 20 and 23

[para 27] The Organization refused to provide the Applicant with documents it labels as “Contents of Personnel File from Gaalaas Branch and Home Office, PFS HQ” (# 20 on the chart). It also refused to provide the Applicant with documents it labelled “All paperwork, files, and notes from all Upline and Primerica personnel”(#23 on the chart).

[para 28] Upon review of the documents I find that these documents do contain personal information of the Applicant. The withheld documents contain the opinions of others in the Organization about the Applicant's performance. I will therefore consider below whether they were properly withheld under section 24(2)(c).

Records associated with the Applicant's complaint to MFDA

[para 29] At some point in 2009, the Applicant filed a complaint about the Organization with the Mutual Fund Dealers Association (MFDA). The Organization was compelled to respond to the MFDA as a condition of their operation to sell mutual funds. The Organization set up an investigation into the complaint. The Organization claims the documents that it withheld from the Applicant were collected for this investigation.

[para 30] The documents reveal that in this case, the Applicant was both the company's representative (by selling the mutual funds) and client (by buying the mutual funds). The documents regarding these mutual fund holdings (the Applicant as client) have been given to the Applicant in response to her request for personal information. The documents not given to the Applicant show the responses of various individuals to requests from the head office explaining steps taken in the investigation. These documents refer more to the process of the investigation rather than to the Applicant.

[para 31] On this account, I find the information is not the Applicant's personal information.

- 3. If the Organization refused to provide access to the Applicant's personal information in its custody or control, did it do so in accordance with section 24(2) (discretionary grounds for refusal). In particular,**
 - a. Did the Organization properly apply section 24(2)(b) (confidential information of a commercial nature) to certain requested records or parts thereof?**

[para 32] I do not have to deal with the Organization's application of section 24(2)(b) to various documents as I have previously determined that those documents do not contain the Applicant's personal information (paras 24-26).

- b. Did the Organization properly apply section 24(2)(c) (information collected for an investigation or legal proceeding) to certain requested records or parts thereof?**

Chart #s 20 and 23

[para 33] The Organization relied on section 24(2)(c) (information collected for an investigation or legal proceedings) to refuse to provide the Applicant with documents it labels as "Contents of Personnel File from Gaalaas Branch and Home Office, PFS HQ" (# 20 on the chart). It also refused to provide the Applicant with documents it labelled "All paperwork, files, and notes from all Upline and Primerica personnel" (#23 on the chart) on the same basis.

[para 34] Section 24(2)(c) provides:

24(2) An organization may refuse to provide access to personal information under subsection (1) if ...

(c) the information was collected for an investigation or legal proceeding;... .

[para 35] “Investigation” is defined at section 1(1)(f) of the Act as:

(f) “investigation” means an investigation related to

- (i) a breach of agreement,*
- (ii) a contravention of an enactment of Alberta or Canada or another province of Canada, or*
- (iii) circumstances or conduct that may result in a remedy or relief being available in 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 36] “Legal proceeding” is defined at section 1(1)(g) of the Act as:

(g) “legal proceeding” means a civil, criminal or administrative proceeding that is related to

- (i) a breach of an agreement,*
- (ii) a contravention of an enactment of Alberta or Canada or of another province of Canada, or*
- (iii) a remedy available at law;...*

[para 37] The Applicant’s agency contract with the Organization was terminated in August, 2007. The Applicant appealed that termination to Field Management. An investigation regarding that termination was initiated. The documents that relate to that investigation have been withheld by the Organization. The Applicant, in her appeal from termination, asked questions regarding various workplace issues. The documents that have been withheld consist of responses by various individuals to those concerns of the Applicant as well as containing some of her personal information. At the conclusion of the investigation, the Applicant’s termination was upheld and she was directed to contact the “legal department of the Organization in case she wants to pursue this further.”

[para 38] I find that these documents could be withheld under section 24(2)(c) as part of an investigation relating to a potential breach of an agreement (the agency contract with the Organization).

[para 39] Since the section of the Act that permits the Organization to withhold is discretionary (it uses the word “may”), I must further consider if the Organization properly exercised its discretion to withhold.

c. Does section 24(3)(b) (information revealing personal information about another individual) apply to certain requested records or parts thereof?

[para 40] The records do not reveal personal information about another individual.

[para 41] Since the investigation was undertaken from an appeal of a termination of a contract, I can infer that the information that was collected about the Applicant was used to determine whether that termination was lawful and could successfully be upheld. The information included the opinions of others within the Organization about the Applicant’s performance and competency. I note the Organization did not rely on section 24(3)(c) of the Act, which entitles it to withhold such opinion information if the person giving it does not consent to disclosure. However, the fact the records contained such opinions, as well as the fact the considerations the Organization took into account in determining the outcome of the investigation would likely be intended by it to be confidential, seems like reasonable considerations in exercising discretion to withhold under section 24(2)(c).

[para 42] Section 24(3)(c) states:

(3) An organization shall not provide access to personal information under subsection (1) if

(c) the information would reveal the identity of an individual who has in confidence provided an opinion about another individual and the individual providing the opinion does not consent to the disclosure of his or her identity.

[para 43] If the Organization did take into account section 24(3)(c), it must further look at the documents to determine if it could reasonably sever the opinion information from the copy of the record that contains personal information about the applicant.

4. If the withheld records contain or consist of personal information of the Applicant, and if section 24(2)(b) applies to these records, is the Organization reasonably able to sever the information to which this section applies, and provide the personal information of the Applicant, as required by section 24(4)?

[para 44] Section 24(4) of the Act reads:

(4) If an organization is reasonably able to sever the information referred to in subsection (2)(b) or 3(a), (b) or (c) from a copy of the record that contains personal information about the applicant, the organization must provide the applicant with access to the part of the record containing the personal information after the information referred to in subsection (2)(b) or (3)(a),(b), or (c) has been severed.

[para 45] Since I have found that the Organization could rely on section 24(3)(c) and that section 24(3)(b) does not apply, I must now determine if the Organization could reasonably sever information containing the personal information of another individual.

[para 46] Upon review of the records, it would appear that the Organization could sever the opinions of others and disclose parts of the records that describe the Applicant's appeal and her submissions to the Organization on the appeal. These records would be the following entitled "Historical Agent Tracking System (HATS) Production":

- the entire page 21 (the Organization has numbered and circled the numbers),
- page 22 to the end of the sentence "...continue working for our company.",
- the entire page 26, and
- the entire page 27.

5. Did the Organization comply with section 27(1)(a) of the Act (duty to assist including duty to conduct an adequate search for responsive records)?

Duty to assist and illegible documents

[para 47] The first piece of evidence (Evidence #1) submitted by the Applicant is a copy of an Independent Business Application. The Applicant had filled out two of these applications. She requested copies of both. She received certain pages of these applications that contain her personal information. She states her copies are not legible and that she should have the entirety of the documents.

[para 48] The Organization in its submissions to the inquiry, tendered an affidavit of its privacy officer. In the affidavit, point number 9 addresses this concern.

In the case of all documents produced to [the Applicant], the best available copies were provided to her. Primerica acknowledges that in some limited cases, the quality of the images that were retained in our records may not have been ideal; however there are no clearer copies available to produce to her.

[para 49] Section 5(5) of the Act indicates the following:

(5) In meeting its responsibilities under this Act, an organization must act in a reasonable manner.

[para 50] Section 2 of the Act reads as follows:

2 Where in this Act anything or any matter

(a) is described, characterized or referred to as reasonable or unreasonable, or

(b) is required or directed to be carried out or otherwise dealt with reasonably or in a reasonable manner,

the standard to be applied under this Act in determining whether the thing or matter is reasonable or unreasonable, or has been carried out or otherwise dealt with reasonably or in a reasonable manner, is what a reasonable person would consider appropriate in the circumstances.

[para 51] With respect to the documents regarding the Independent Business Applications, I find that the Organization gave the Applicant the best copies of the documents that contained her personal information that it could. I find that the Organization acted reasonably in meeting its responsibilities.

Adequacy of search

[para 52] The Organization's Privacy Officer, in his affidavit, lists the people who conducted the search for records and the scope of the search. He also lists which departments were searched in the Organization and why they would be likely candidates for responsive records. The affidavit also discloses what databases were searched and where those databases are located. Paragraph 8 states the following:

Primerica has two corporate offices from which it conducts its operations in Canada: 1) the head office in Mississauga, Ontario, and 2) the Quebec operations office located in Laval, Quebec. The Quebec office is specific to Primerica's operations in Quebec, so any records in Primerica's possession regarding {the Applicant} would be maintained at Primerica's Mississauga Office. There are a very limited number of systems through which Primerica maintains its records, and as outlined above, Primerica conducted a comprehensive search of all of those systems and requested all available records to be reviewed for the purposes of [the Applicant's] request.

[para 53] The Organization provided evidence in the affidavit that, at first, it believed that it was responding to an access request under Federal Legislation. Upon learning that the request was under the *Personal Information Protection Act* of Alberta, the Organization contacted its branch office in Edmonton for records. Information received from the branch office in Edmonton indicated that aside from records relating to the Applicant as a client of the Organization, they had no documents relating to the Applicant

as an agent of the Organization as such records had been destroyed at some time after her termination in 2007. There was no evidence as to when the documents were destroyed.

[para 54] The Applicant submits, as “Evidence #3”, an email received by her on December 21, 2007. The email includes an expense report. The Applicant relies on this to suggest that the Organization is being misleading when it claims that records relating to her personal information were immediately destroyed when she was terminated in August 2007. “Evidence #3” does not contradict the Organization’s assertion about the destruction of the documents since the Organization did not state when the documents relating to her agency were destroyed.

[para 55] Additionally, the Applicant submits as “Evidence #4”, a Client Branch File Verification Form and attached letter dated September 9, 2009. Again, the Applicant suggests that since this confirmed the presence of a Mutual Fund Client Branch File in the Regional Office, other documents must also still exist. Similarly this “evidence” does not contradict any of the Organization’s assertions regarding the Applicant’s agency records. Indeed, the Organization continues to retain her Mutual Fund documents and has supplied her with a copy of those documents.

[para 56] An Organization does not have a general duty to keep personal information of an Applicant for a specified period of time. Section 35 of the Act states:

35 An organization may retain personal information only for as long as the organization reasonably requires the personal information for legal or business purposes.

However, this provision is a prohibition against keeping records after they are no longer needed; it is not a requirement to keep them.

[para 57] In this case, sometime after the investigation regarding an appeal from termination had been completed, records regarding the Applicant’s personal information as an agent had been destroyed. This is a reasonable course of action. This also explains why many documents that the Applicant requested are not in the possession of the Organization.

[para 58] Based on the evidence that I received from the Organization, I am satisfied that an adequate search for records was conducted. I am also satisfied that no more responsive documents exist other than what have been found or produced.

V. ORDER

[para 59] I make this Order under section 52 of the Act.

[para 60] I find that certain documents (listed in the Organization’s document chart as #11) that were requested by the Applicant did not contain her personal information and the Organization was not under a duty to produce those records.

[para 61] I find that the Organization properly withheld records (document chart #3) under section 24(2)(b) of the Act.

[para 62] I find that the Organization properly withheld most records (document chart #20 and #23) under section 24(2)(c) of the Act, however; after applying section 24(4), I order the following records (entitled “Historical Agent Tracking System (HATS) Production) to be released:

- the entire page 21 (the Organization has numbered the pages and circled the numbers and I am using their numbering system),
- page 22 to the end of the sentence ...continue working for our company.”,
- the entire page 26, and
- the entire page 27.

[para 63] I find that the Organization complied with section 27(1)(a) of the Act (duty to assist).

[para 64] I 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.

Neena Ahluwalia Q.C.
Adjudicator