

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER P2015-09

September 21, 2015

ROULSTON CHOW

Case File Number P2724

Office URL: www.oipc.ab.ca

Summary: A Complainant made a complaint to the Commissioner that two individuals from the law firm Roulston Chow (the Organization) collected his address and that of his girlfriend without authorization and used this personal information to serve him with a statement of claim in contravention of the *Personal Information Protection Act* (PIPA).

The Adjudicator found that the evidence as to whether the two individuals had collected and used the Complainant's personal information was not entirely conclusive. However, assuming that they had collected and used the Complainant's personal information, she determined that they would have done so in their personal capacities, and therefore, PIPA would not apply to any collection or use by the two individuals. Moreover, there was no evidence that the Organization had collected or used the Complainant's personal information.

Statutes Cited: **AB:** *Personal Information Protection Act*, S.A. 2003, c. P-6.5 ss. 1, 3, 52; Access to Motor Vehicle Information Regulation, A.R. 140/2003 s. 2

I. BACKGROUND

[para 1] A Complainant made a complaint to the Commissioner that two individuals who are lawyers at Roulston Chow collected his and his girlfriend's address information and used it to serve him with a statement of claim. He also complained that they used his personal information to make a complaint to the Better Business Bureau.

The Complainant complained that these actions were in contravention of the *Personal Information Protection Act* (PIPA).

[para 2] The Commissioner authorized mediation to resolve the complaint. As mediation was unsuccessful, the matter was scheduled for a written inquiry.

[para 3] For the purposes of this inquiry, I will refer to the two lawyers from Roulston Chow as the “two individuals” and Roulston Chow as “the Organization”.

II. ISSUES

Issue A: Did the two individuals collect and/or use the Complainant’s information?

Issue B: If the answer is yes, did they do so in their capacity as members of, or on behalf of, an organization, or in their personal capacity?

Issue C: If the collection and/or use was in individual’s capacities as members of an organization, is the collection and/or use excluded from the Act by virtue of section 4(3)(a)?

Issue D: If the collection and/or use was in the two individuals’ capacities as members of an organization, did the Organization collect and/or use “personal information” of the Complainant as that term is defined in PIPA? (*If the information is not personal information, the Act does not apply.*)

Issue E: If the collection and/or use was in the two individuals’ capacities as members of an organization, but the home address was the Complainant’s business contact information, is the collection and/or use excluded from the Act by virtue of section 4(3)(a)?

Issue F: If the collection and/or use of the information was in the two individuals’ capacities as members of an organization, and if the information is the Complainant’s personal information, did the Organization collect and/or use the information contrary to, or in compliance with, section 7(1) of PIPA (no collection or use without either authorization or consent)? In particular, did the Organization have the authority to collect and use the information without consent, as permitted by sections 14 and 17 of PIPA?

Issue G: If there was authority for collection and/or use under sections 14 and 17:

- a. Did the Organization collect and/or use the information contrary to, or in accordance with, sections 11(1) and 16(1) of PIPA (collection and/or use for purposes that are reasonable)?**

- b. Did the Organization collect, and/or use the information contrary to, or in accordance with, sections 11(2) and 16(2) of PIPA (collection and/or use to the extent reasonable for meeting the purposes)?**

Issue H: If the collection and/or use of the information was in the two individuals' capacities as members of an organization, did they collect the information contrary to, or in accordance with, section 13(3) of PIPA? In particular, were they required to provide, and did they provide, information regarding their purpose before or at the time of collecting the information?

III. DISCUSSION OF ISSUES

Issue A: Did the two individuals collect and/or use the Complainant's information?

Issue B: If the answer is yes, did they do so in their capacities as members of, or on behalf of, an organization, or in their personal capacities?

[para 4] The two individuals named in the Complaint and Roulston Chow argue:

The Complainant, [...] has made unfounded allegations against the law firm Respondent [...]. The entirety of [the Complainant's] complaint and the related complaint P2395 of his girlfriend, [...] upon which [the Complainant] relies, are based on the false premise that the Organization had anything to do with these matters.

The entire OIPC proceedings, including the within inquiry are without lawful jurisdiction in relation to the Organization or its individual members, [...] and [...]. Since the first communication with the OIPC on August 2, 2013 the Organization and [the two individuals] have been pointing out the indisputable facts; that any and all conduct by [the two individuals] has been as individuals acting in their personal and domestic capacities and not as members of or in any way on behalf of the Organization.

Neither [the Complainant nor his girlfriend] has ever provided, nor has the OIPC identified any evidence to the contrary. Of course, that would be impossible to do, as no such evidence exists.

[para 5] The Complainant provided details of an investigation conducted by a Service Alberta investigator to support his complaint. The investigation conducted by Service Alberta states only that the Complainant's personal information and that of his girlfriend was collected without authorization by an employee of the Insurance Bureau of Canada and provided to an insurance fraud investigator in one instance, and released in another instance, with authorization under section 2 of the Access to Motor Vehicle Information Regulation (AMVIR) to an AMVIR account holder for litigation purposes. (The Complainant does not take issue with this latter search.) Service Alberta did not provide the names of the recipients of the information or state the addresses that were given out. However, the date the searches Service Alberta refers to as "unauthorized" were conducted on May 14, 2013 and the Complainant was apparently served with a statement of claim relating to a claim that the two individuals had made against him, at his girlfriend's house, shortly thereafter.

[para 6] The timing of the searches for the Complainant's and his girlfriend's addresses and the subsequent service of the two individuals' statement of claim, is not conclusive in that there may be explanations for these circumstances, although it does suggest a possible connection between the searches and the litigation, such that the searches may have been conducted for the benefit of the two individuals in the litigation.

[para 7] It is not necessary for me to determine whether this happened, however.

[para 8] Section 3 of PIPA establishes the purpose of PIPA. It states:

3 The purpose of this Act is to govern the collection, use and disclosure of personal information by organizations in a manner that recognizes both the right of an individual to have his or her personal information protected and the need of organizations to collect, use or disclose personal information for purposes that are reasonable.

From the foregoing, I conclude that PIPA is intended to regulate the collection, use, and disclosure of personal information by organizations.

[para 9] To further this purpose, the duties and obligations created by PIPA apply to organizations only.

[para 10] Section 1(1)(i) of PIPA provides the following definition of "organization". This definition provides:

1(1) In this Act

- (i) "organization" includes*
 - (i) a corporation,*
 - (ii) an unincorporated association,*
 - (iii) a trade union as defined in the Labour Relations Code,*
 - (iv) a partnership as defined in the Partnership Act, and*
 - (v) an individual acting in a commercial capacity,*

but does not include an individual acting in a personal or domestic capacity [...] [my emphasis]

[para 11] As a result of the foregoing provision, even if it were the case (for which there is no conclusive evidence before me) that the two individuals were directly involved in the collection of the Complainant's address information, before PIPA could apply to this collection of information by them, it would also have to be the case that the collection was done in their capacity as members of an organization (for example, as members of the law firm). The same would be true if some third party had been retained by the two individuals to take part in the unauthorized search. Again, for PIPA to apply, it would have to be the case that this third party had been retained by the two individuals acting as members of an organization.

[para 12] However, neither scenario appears to be true. The two individuals who are the subject of the complaint provided records relating to the litigation for my review. The records indicate that the litigation relates to renovation services the Complainant provided to the individuals for their private residence. The records also indicate that the individuals hired the Complainant on their own behalf, and not that of the Organization. The two individuals did not represent themselves in the litigation, nor did the Organization. Rather, the two individuals were represented in the litigation by another law firm. The statement of claim and the affidavits supporting the statement of claim refer to the individuals in their private capacities and not as representatives of an organization.

[para 13] The Organization argued that there is no evidence before me that the two individuals, acting as members of the law firm or on its behalf, collected or used the Complainant's address from the MOVES database. The Service Alberta investigator does not indicate that the Organization was provided the Complainant's personal information, and the Organization did not serve the statement of claim on the Applicant.

[para 14] Given the circumstances outlined above, even if it were the case that the two individuals personally participated in the search for the Complainant's address information, or retained some third party to participate, there is nothing to suggest they would have been acting as members of the Organization in doing so.

[para 15] Rather, any information they collected and used about the Complainant, for the purpose of serving the Complainant with a statement of claim, or for reporting the Complainant to the Better Business Bureau, would have been collected and used in the individuals' personal capacities, rather than in commercial capacities within the terms of section 1(1)(i)(v) of the Act.

[para 16] As I find that PIPA does not apply to any collection or use of the Complainant's personal information by the individuals named in the complaint, and as I find the Organization did not collect or use the Complainant's personal information, I need not address the other questions set for the inquiry.

[para 17] I am grateful to the individuals named in the complaint and the Organization for providing detailed and helpful submissions and evidence for the inquiry.

IV. ORDER

[para 18] I make this Order under section 52 of the Act.

[para 19] I have decided that PIPA does not apply to the Complainant's complaint as the complaint is about individuals acting in their private capacities.

[para 20] I confirm that the Organization did not collect or use the Complainant's personal information in contravention of PIPA.

Teresa Cunningham
Adjudicator