

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER P2018-07

November 21, 2018

CANADIAN ENERGY WORKERS' ASSOCIATION

Case File Number 001743

Office URL: www.oipc.ab.ca

Summary: The Complainant made a complaint to the Commissioner that the president of the Canadian Energy Workers' Association (the Organization) disclosed his personal information at a meeting of the Organization's members. The Complainant had filed a complaint that the Organization had not met its duty to fairly represent him. At a meeting of the Organization's members, the President of the Organization had provided information about the complaint and the manner in which the Organization had investigated and dealt with it, to the Organization's members.

The Adjudicator found that the provision of the Complainant's personal information to the Organization's members was a use of the information, rather than a disclosure. She found that the Organization's use of the Complainant's personal information was reasonable for the purpose of an investigation and legal proceedings, as the Organization had provided information necessary for the Organization's members to understand the complaint against it and to know how it had been addressed. The Adjudicator found that section 17(d) of the *Personal Information Protection Act* (PIPA), which enables an organization to use personal information for the purposes of legal proceedings without consent, authorized this use. In addition, the Adjudicator found that it had not been demonstrated that the Organization had used the Complainant's personal information for anything other than reasonable purposes, or had used more information than was reasonably necessary.

The Adjudicator confirmed that the Organization had not contravened PIPA when the Complainant's personal information was shared at the meeting.

Statutes Cited: AB: *Personal Information Protection Act* S.A. 2003, c. P-6.5, ss. 1, 2, 3, 7, 8, 16, 17, 19, 20, 52; *Labour Relations Code*, R.S.A. 2000, c. L-1, s. 1

Authorities Cited: AB: P2018-06

I. BACKGROUND

[para 1] On September 18, 2015, the Complainant made a complaint to the Commissioner that the president of the Canadian Energy Workers Association (the Organization) disclosed his personal information at a meeting of the Organization's members. The Complainant stated:

Although I was not able to attend the annual general meeting held June 27, 2015 for all CEWA association members to go as I was terminated, it has now been brought to my attention of what was on the agenda for that meeting. I have been told by multiple people who were in attendance and have proof of my statement that [the president] openly spoke in regards to my case [duty of fair representation] that I have with [CEWA]. He discussed in full detail my name, location, his rendition of what happened and what CEWA did and why they did it. He also brought up that I have filed with the Alberta Labor Board. Luckily there were people at this general meeting that stood up for me and proclaimed that [the president] was not stating the full facts of what happened and were disgusted this information was even being shared for all to hear at a general meeting of the membership. I am horrified that all members at this meeting from throughout all divisions of [the Complainant's former employer], who are represented by CEWA, now know not only my name but also my personal business, my grievance, and that I have filed at the labor board. I am really upset that [the president] and CEWA thought this was business that should be brought up for all of my old co-workers to hear.

[para 2] The Commissioner authorized a senior information and privacy manager to investigate and attempt to mediate the matter. At the conclusion of this process, both the Complainant and the Organization requested an inquiry.

II. ISSUES

Issue A: Did the Organization disclose "personal information" of the Complainant as that term is defined in section 1(1)(k) of the Act?

Issue B: Did the Organization disclose the information contrary to, or in compliance with, section 7(1) of PIPA (no collection, use or disclosure without either authorization or consent)? In particular,

- a. Did the Organization have the authority to disclose the information without consent, as permitted by section 20 of PIPA?**
- b. If the Organization did not have the authority to disclose the information without consent, did the Organization obtain the**

Complainant’s consent in accordance with section 8 of the Act before disclosing the information?

Issue C: Did the Organization disclose the information contrary to, or in accordance with, section 19(1) of PIPA (disclosure for purposes that are reasonable)?

Issue D: Did the Organization disclose the information contrary to, or in accordance with, section 19(2) of PIPA (disclosure to the extent reasonable for meeting the purposes)?

III. DISCUSSION OF ISSUES

Issue A: Did the Organization disclose “personal information” of the Complainant as that term is defined in section 1(1)(k) of the Act?

Issue B: Did the Organization disclose the information contrary to, or in compliance with, section 7(1) of PIPA (no collection, use or disclosure without either authorization or consent)? In particular,

- a. Did the Organization have the authority to disclose the information without consent, as permitted by section 20 of PIPA?**
- b. If the Organization did not have the authority to disclose the information without consent, did the Organization obtain the Complainant’s consent in accordance with section 8 of the Act before disclosing the information?**

[para 3] The Organization in this case is a trade union within the terms of the *Labour Relations Code*. The organizational structure of the Organization and the legal framework in which it operates are relevant to the question of whether it used or disclosed the Complainant’s personal information in accordance with PIPA. I have therefore decided to preface this analysis with reference to the legislation governing unions and a union’s makeup.

[para 4] Section 1(1)(x) of the *Labour Relations Code* defines “trade union” for the purposes of that Act, which governs provincial labour relations. It states:

1(1) In this Act

(x) “trade union” means an organization of employees [my emphasis] that has a written constitution, rules or bylaws and has as one of its objects the regulation of relations between employers and employees[...]

Under this definition, a union consists of employees who have organized for the purpose of the regulation of labour relations.

[para 5] Pursuant to the bylaws the Organization provided for my review, the Organization's members appoint or elect a board to handle the Organization's affairs on behalf of the members. As the Organization puts it, "CEWA is a union composed of members of the bargaining unit, and it is operated and administered by an elected Executive Board and its officers."

[para 6] The complaint in this case is that the Organization provided the personal information of the Complainant to its members at a meeting of members. There is no evidence before me that the union disclosed the information *outside* its membership. The board of the union and the members of the union are both part of the same organization. The difference between the board and the members is that the board may take actions that are binding on the members.

[para 7] I find that the complaint before me is not one of "disclosure", given that there is no suggestion in the complaint that information was shared outside the membership of the union. Rather, the complaint is that the Organization *used* the Complainant's personal information without his consent when it provided details of the Complainant's complaint and the union's position regarding it to the Organization's members. I turn now to the question of whether the Organization's use of the Complainant's personal information was in contravention of, or compliance with, PIPA.

[para 8] Section 7(1) of PIPA requires an organization to obtain consent in order to collect, use, or disclose personal information unless PIPA provides otherwise. It states:

7(1) Except where this Act provides otherwise, an organization shall not, with respect to personal information about an individual,

- (a) collect that information unless the individual consents to the collection of that information,*
- (b) collect that information from a source other than the individual unless the individual consents to the collection of that information from the other source,*
- (c) use that information unless the individual consents to the use of that information, or*
- (d) disclose that information unless the individual consents to the disclosure of that information.*

[para 9] If a provision of PIPA authorizes the Organization's use of the Complainant's personal information without his consent, then the use does not contravene section 7(1).

[para 10] Section 17(d) of PIPA provides:

17 An organization may use personal information about an individual without the consent of the individual if one or more of the following are applicable:

(d) the use of the information is reasonable for the purposes of an investigation or a legal proceeding [...]

[para 11] The Organization couched its arguments in terms of section 20(m) of PIPA, which authorizes an organization to disclose personal information without consent when it is reasonable to do so for the purposes of an investigation or a legal proceeding. I understand that it did so because the notice of inquiry indicated that the issues to be addressed were related to allegations of improper disclosure. As noted above, I find the complaint is one of improper use. However, as the terms of section 17(d) and 20(m) are similar, and as the Organization's submissions address either provision, while the Complainant did not make submissions, I have decided not to ask the parties questions regarding use under PIPA, but have decided to make the decision whether section 17(d) applies on the submissions and evidence already before me.

[para 12] The Organization argues:

Section 3 of the Act states:

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.

PIPA expressly recognizes that organizations have a right and a need to use or disclosure of information for purposes that are reasonable — such as responding to allegations in a DFR complaint attacking the union's representational actions under the Labour Relations Code.

If the Adjudicator accepts [the Complainant's] allegation that [the President] disclosed “the CEWA version of what happened and “what CEWA did and why they did it”, then that limited disclosure by [the President] at the CEWA AGM is analogous to a corporate Board of Directors disclosing to shareholders at a company's AGM the existence of litigation against the company, and the nature of the company's defence to the allegations made against it. If several of the company's board members are also personally named as defendants in the litigation (as [the Complainant] had done in the DFR [duty of fair representation] complaint), then those individuals are reasonably allowed to reply to the allegations and outline “what they did and why they did it” to inform the shareholders why the board members are not liable as alleged. Frankly, a failure to respond or discuss the litigation could be viewed by people in attendance as an admission that the allegations have some merit.

[...]

Transparency and accountability are important aspects of elected leaders, and PIPA should be interpreted to allow union officials a reasonable measure of disclosure (and expressive activity under section 2(d)) of the *Charter*) in carrying out their duties — especially for purposes directly connected to legal proceedings brought against the union by a former member.

As noted above, it would be unreasonable for PIPA to be interpreted so that:

- A complainant could commence a legal proceeding against an organization that was expected (and did) result in a public decision on the merits;
- A complainant could disclose the fact that s/he filed a legal proceeding against the organization to other members of the organization;
- Those members could ask questions at a members-only meeting about the legal proceedings against the organization and 3 of its executive members;
- But the organization could not even confirm that the complainant had filed the complaint (because that would disclose (the name of the complainant), could not discuss any details of the complaint, and could not provide any information about why the organization (and the 3 executive members) felt it would not be liable and what its defence(s) was to the complaint — except with the express written consent of the complainant.

[para 13] While it is not entirely clear from the evidence before me the extent to which the Complainant's personal information was disclosed by the Organization, the parties appear to be in agreement that his name, and some of the background relating to his allegations that the Organization failed in its duty of fair representation was provided to the membership. Such information is "personal information" within the terms of section 1(k) of PIPA, which defines "personal information" as "information about an identifiable individual".

[para 14] In Order P2018-06, I considered whether section 17(d) of PIPA authorized a board of a cooperative to provide information about an investigation it had conducted regarding a member of the cooperative, to the other members. I concluded that it did, stating:

As noted above, section 17(1)(d) authorizes an organization to use personal information for the purposes of an investigation. In my view, learning the results of the investigation and the legal significance of those results is encompassed by section 17(1)(d). It would defy common sense to suggest that the members of a cooperative may hire a lawyer to conduct an investigation on their behalf and prepare a report of the investigation for them, but may not learn the results of the investigation or the details of any legal advice developed for their benefit, without the consent of any identifiable individuals referred to in the report or the advice.

If the Organization had the authority to conduct the investigation, then its members had the authority to review the results of the investigation. As noted above, section 80 of the *Cooperatives Act* requires a director to disclose to the cooperative the nature and extent of any interest it has in particular transactions. When a statute imposes a duty on one party to do something for another party, such as to disclose information about conflicts to it, a corresponding right arises in the other party to receive or obtain that information. In essence, the Organization has a right under section 80 of the *Cooperatives Act* to receive information from its directors regarding their actual or potential conflicts. It follows from the nature of this right that the Organization also has the power to enforce it, through an investigation as to whether its directors have met their duties to the Organization. Any use of personal information contained in the report to determine whether its directors were meeting their duties to the Organization was therefore authorized by section 17(d) and the Organization did not require consent to use the personal information contained in the report.

The board in this case used some of the Complainant's personal information from the report to make a decision as to whether the Complainant should continue to be a board member. It then informed the Organization's members of the outcome of the investigation and the report, and the decision it made to remove the Complainant from the board. As noted above, the board's decision to communicate information from the report is a subject of the Complainant's complaint.

The board decided to limit the information it would provide members. While PIPA would not prevent the board from providing the full report to members, I accept that the board made the decision to limit information in accordance with its judgement and the Organization's bylaws, as it is empowered to do.

Neither the *Cooperatives Act* nor PIPA has provisions expressly authorizing an organization to use or disclose personal information without consent when doing so is reasonable for the purposes of board governance or managing a cooperative. In my view, providing the reasons for removing a board member to the members of the organization the board member represented may be necessary in some cases for the purposes of effectively managing a cooperative organization. Nevertheless, the absence of a provision in the *Cooperatives Act* that would authorize the use of personal information for this purpose does not harm the Organization's case, here. I find that section 17(d) of PIPA authorized the Organization's use of the Complainant's personal information when the board communicated the Complainant's personal information from the report to the Organization's members to inform members of the steps the Organization had taken on behalf of the members regarding the Complainant and the reasons for them.

[para 15] The Organization asserts that it used the Complainant's personal information to inform its members of the investigation it conducted on behalf of the Organization's members and the manner in which it conducted legal proceedings in which the Organization was a party. It argues that this purpose is authorized by section 3.

[para 16] The Organization investigated the Complainant's grievance under the collective agreement; once it decided not to pursue the grievance, it became the subject of a complaint that it had not met its duty to represent the Complainant fairly. The Complaint was brought against the Organization, which, as discussed above, consists of members.

[para 17] I agree with the Organization that PIPA authorizes the Organization's use of the Complainant's personal information, although I consider this authority to come from section 17(d), rather than 3. In my view, the phrase "for the purposes of an investigation or a legal proceeding" is not intended to capture only that information used in the course of conducting an investigation or a proceeding, but also includes providing the results of the investigation or proceeding to the organization's members and representatives, after its conclusion. In other words, sharing the results of an investigation or legal proceeding with an organization's members and representatives is a purpose of conducting an investigation or legal proceedings. Were it otherwise, an organization could be named as a respondent in legal proceedings, and participate in the proceedings, but its members could not then learn how the organization conducted those proceedings on their behalf, or what the result of the legal proceedings was, without the consent of the opposing party, if the opposing party is an individual. I agree with the Organization that that would be an untenable result.

[para 18] As there is no evidence before me to suggest the Organization provided personal information to the members that was not reasonably related to the investigation and legal proceedings, I find that section 17(d) authorizes the Organization’s use of the Complainant’s personal information without his consent. The Organization’s sharing of the Complainant’s personal information was reasonable in this case for the purpose of the legal proceedings, as it enabled the membership to understand what its position in legal proceedings had been, and why.

[para 19] To conclude, I find that the Organization used the Complainant’s personal information for the purpose of informing its members as to the outcome of an investigation and legal proceeding it had conducted on behalf of the members, and its reasons for conducting the legal proceeding in the way that it did. I find that this use of personal information without consent is authorized by section 17(d) of PIPA.

Issue C: Did the Organization disclose the information contrary to, or in accordance with, section 19(1) of PIPA (disclosure for purposes that are reasonable)?

Issue D: Did the Organization disclose the information contrary to, or in accordance with, section 19(2) of PIPA (disclosure to the extent reasonable for meeting the purposes)?

[para 20] As discussed above, I find that the Organization used the Complainant’s personal information, given that there is no evidence that the information was distributed outside the Organization. I will therefore answer the question of whether the Organization’s use of the Complainant’s personal information complied with the terms of section 16, which limits an organization to using personal information for purposes that are reasonable. Section 16 states:

16(1) An organization may use personal information only for purposes that are reasonable.

(2) Where an organization uses personal information, it may do so only to the extent that is reasonable for meeting the purposes for which the information is used.

[para 21] Section 2 of PIPA explains what is meant by “reasonable” when this term is used in the Act. It states:

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 22] I have already found that the Organization's purpose in using the Complainant's personal information was for the purposes of an investigation and legal proceedings, as it provided information to the Organization's members as to the legal issues the Organization faced and how they were addressed, and the manner in which legal proceedings were conducted on behalf of the Organization's members.

[para 23] I find that the Organization's purposes in using the Complainant's personal information were reasonable and there is no evidence before me to support finding that it used personal information that was not reasonably necessary for meeting those purposes. I find that the Organization's use of the Complainant's personal information was in compliance with section 16 of PIPA.

IV. ORDER

[para 24] I make this Order under section 52 of the Act.

[para 25] I confirm that the Organization did not contravene the Act when it discussed the Complainant's personal information at the members meeting.

Teresa Cunningham
Adjudicator