

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER P2020-01

January 31, 2020

PRIMCO DENE (EMS) LTD.

Case File Number 004205

Office URL: www.oipc.ab.ca

Summary: The Complainant made a complaint to the Commissioner under the *Personal Information Protection Act* (PIPA) that her employer, Primco Dene (the Organization) had disclosed details of a work place conflict to Standard Life, an insurer to which she had submitted a disability claim. She also complained that an agent of the Organization had emailed Standard Life to ask what information would be required for the Complainant's disability claim to be accepted and that by doing so, the Organization had disclosed her personal information without her consent.

The Adjudicator found that the Complainant had consented to the disclosure of information regarding the workplace conflict to Standard Life when she completed the application form for disability benefits.

With regard to the disclosure of the Complainant's personal information by the agent, the Adjudicator found that the Complainant had not consented to the Organization's agent's disclosure of her personal information. The Adjudicator also found that the Organization had not provided notice regarding its intent to disclose this information. However, the Adjudicator determined that in the circumstances, section 20(a) of PIPA authorized the Organization's disclosure without consent.

Statutes Cited: AB: *Personal Information Protection Act*, S.A. 2003, c. P-6.5, ss. 1, 7, 8, 20, 52

I. BACKGROUND

[para 1] On October 7, 2016, the Complainant complained to the Commissioner that her employer, Primco Dene (the Organization) had disclosed details of a work place conflict to Standard Life, an insurer to which she had submitted a disability claim. She also complained that an agent of the Organization had contacted Standard Life to ask what information would be required for the Complainant's disability claim to be accepted. The Complainant argued that she did not consent to either of these disclosures.

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

[para 3] The Adjudicator confirmed that the Organization's disclosures were in compliance with PIPA.

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 disclosure without either authorization or consent)? In particular,

- a. Did the Organization have the authority to disclose the information without consent, as permitted by sections 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 collecting, using or disclosing the information? In particular,**
 - i. Did the individual consent in writing or orally? or**
 - ii. Is the individual deemed to have consented by virtue of the conditions in section 8(2)(a) and (b) having been met? or**
 - iii. Is the collection, use; or disclosure permitted by virtue of the conditions in section 8(3)(a), (b) and (c) having been met?**

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?

[para 4] The first question to consider in an inquiry regarding the disclosure of personal information is whether the information that is the subject of the complaint is “personal information” within the terms of section 1(1)(k) of PIPA. This provision states:

1(1) In this Act,

(k) “personal information” means information about an identifiable individual [...]

[para 5] A note dated May 7, 2015 prepared by an employee of Standard Life documents that the Complainant’s employer informed the insurer of a conflict between the Complainant and another employee. This note states:

[Employer] confirmed dates [employee] last worked and Date unable to work are due to shift change. However, [discussion of workplace conflict] There are usually lay-off from October through mid-march, however [employee] was not included in the layoffs. [Employer] confirmed that the [employee] had been in contact through email in regards to shifts. Modified [return to work] could be possible if [employee] was capable of completed office type duties. Writer confirmed that the [employee] had not been contacted however when and if she is available for modified it would be confirmed with [employer]. Writer thanked [employer] and ended the call.

[para 6] The foregoing note permits me to draw an inference that the Organization disclosed information about the Complainant and a workplace conflict in which she was involved, to Standard Life. The fact that the Complainant was involved in workplace conflict is information about her as an identifiable individual and is her personal information.

[para 7] The Organization states:

Information concerning [the Complainant] was collected by [the Organization] and TIPI [the Organization’s agent] and was disclosed by [the Organization] to Standard Life in relation to [the Complainant’s] disability claim. Some of the information at issue is personal information as defined in section 1(1)(k) of the PIPA. Specifically, the information regarding [the Complainant’s] workplace conflict and the information respecting her disability claim is personal information.

[para 8] The Organization concedes that it disclosed the Complainant’s personal information when it provided the information regarding the workplace conflict to Standard Life, and also when its agent emailed information about the Complainant’s disability to Standard Life. However, it argues that it did so with the Complainant’s authorization.

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

[para 9] Section 7(1) of PIPA requires an organization to obtain the consent of an individual prior to collecting, using, or disclosing the individual's personal information, unless another provision of PIPA authorizes collection, use, or disclosure without consent. 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 10] If the Complainant consented to the disclosure within the terms of section 8 of PIPA, or another provision of PIPA authorizes the disclosure without her consent, then the Organization's disclosure complies with section 7(1) of PIPA.

[para 11] Section 8 of PIPA, which sets out the forms valid consent may take, states, in part:

8(1) An individual may give his or her consent in writing or orally to the collection, use or disclosure of personal information about the individual.

[...]

(2.1) If an individual consents to the disclosure of personal information about the individual by one organization to another organization for a particular purpose, the individual is deemed to consent to the collection, use or disclosure of the personal information for the particular purpose by that other organization.

[...]

(4) Subsections (2), (2.1), (2.2) and (3) are not to be construed so as to authorize an organization to collect, use or disclose personal information for any purpose other than the particular purposes for which the information was collected.

[...]

[para 12] I turn now to consideration of whether the Organization complied with section 7(1) of PIPA in relation to the disclosures that are the subject of the complaint.

Disclosure Regarding Workplace Conflict

[para 13] The Complainant notes in her submissions:

On May 11, 2015, the Complainant received a phone call from a claims adjuster at Standard Life who asked her questions about the “workplace conflict”. The Complainant wondered why these questions were asked when they were not relevant to a foot condition and had not [been] previously mentioned by herself to anyone at Standard Life.

On May 12, 2015, the Complainant’s short-term disability application was denied. The Complainant believes that Standard Life relied upon the information about the workplace conflict to deny her disability benefits.

[para 14] The Complainant takes the position that she did not give consent to her employer to provide information to Standard Life regarding the workplace conflict in which she was involved. She argues:

The Complainant did not provide consent to [the Organization] to disclose the workplace conflict and holds that the Standard Life Consent cannot be stretched to apply to her employer. The basic starting point is that consent is always required to the collection, use and disclosure of personal information: PIPA, s. 7(1). For an individual to provide valid consent, it should be specific and at least must be known as to the extent of the consent. In this case, it could not have been contemplated that consent in a disability application would precipitate a disclosure by her employer of workplace dynamics. It is unreasonable for an individual’s consent to be used in a way that could not be contemplated at the time of its giving.

[para 15] The Complainant argues that the consent she signed was not sufficiently specific so as to authorize the Organization’s disclosure of information regarding the workplace conflict.

[para 16] The Organization’s principle argument is that the Complainant consented to its communication of her personal information to Standard Life. It relies on two consents, to which it refers as “the first consent” and the “second consent”.

[para 17] The first consent appears on the Applicant’s application to become a member of Standard Life’s insurance plan. This consent, states, in part:

I hereby accept the conditions of this policy and I authorize the necessary contributions to be made through salary deductions, if applicable.

[...]

I authorize my employer, the policy holder, the plan administrator, The Standard Life Assurance Company of Canada or their reinsurers, their respective agents to give, receive and share any personal information regarding my eligibility and my insurability or those of my dependents, if any under this plan.

[...]

[para 18] The second consent appears on a form entitled “Disability Claim Form Initial Assessment”. The form was created by Standard Life. This consent states, in part:

I authorize any health care professional, hospital, clinic, pharmacist, provincial health insurance plan, rehabilitation agency, insurer, employer, or any other person or organization in possession of information concerning [me] to release to The Standard Life Assurance Company of Canada all medical, financial, or other information deemed relevant by Standard Life, permitting the assessment of my claim.

I authorize The Standard Life Assurance Company of Canada to conduct all necessary investigations required in order to verify the validity of my claim. I accept that Standard Life and / or their authorized agents will use the information provided in this form and in my pertinent prior claims under the same plan for the management of my claim and for production of statistical reports.

[para 19] In my view, the “first consent” does not amount to consent for Standard Life or the Organization to exchange personal information other than for the purpose of enabling Standard Life to determine whether the Complainant (or her dependents) was eligible to become a member of the plan and was insurable. From its terms, I do not accept that this consent was intended to authorize collection, use, or disclosure of the Complainant’s personal information for purposes other than plan enrolment.

[para 20] I find that the “second consent” – the consent the Complainant signed in order to obtain benefits – did authorize her employer to disclose her personal information regarding the workplace conflict in the circumstances. As noted above, the authorization signed by the Complainant authorizes her employer to release to the Organization “all medical, financial, or other information deemed relevant by Standard Life, permitting the assessment of my claim.” For the reasons that follow, I find that the information that was disclosed to the employee of Standard Life falls within this category.

[para 21] Standard Life’s “Action Plan”, dated May 7, 2015, forms part of the evidence in relation to related case file 004248. It was created by the Standard Life employee who collected the information regarding the workplace conflict and states:

Analysis – Factors of Influence to a Return to Work

Medical obstacles: Pre-existing mass discovered in 2013 and treatment was not successful. Waiting for a specialist consultation, a diagnostic exam or a surgery: Appointment with podiatrist April 15, 2015

Non-medical obstacles: Work place performance review completed prior to [the employee] going off work.

All referral tasks set up: Yes

Rehab Potential: Possibly: depends how the coming weeks go with current treatment if no [return to work] is scheduled then rehab should be consulted.

Questions: Any workplace issues

Current treatment and recovery

Is there surgery planned?

Discuss MRTW [modified return to work]

Decision

The [employee] is a [... female] who works within a medium NOC [National Occupational Classification] level. The medical received was completed by a podiatrist. The max time loss that can be covered by the podiatrist is 4 weeks. There is no current return to work scheduled. There have been diagnostic tests completed with no suggestions of surgery or other invasive treatment. [The employee] has not been responding to the regular treatment for the [diagnosis] that is listed. It would be beneficial to confirm with [employer] if there are any underlying concerns within the work place.

MDA [Medical Disability Advisor: Workplace Guidelines for Disability] suggests a time loss for 28 days maximum. At this point additional information is required from the employee prior to approval / benefits.

[para 22] The foregoing action plan indicates that Standard Life's adjudicator considered workplace factors relevant to the adjudication of disability benefits. In addition, it indicates that she intended to contact the Organization to gather information regarding workplace factors in order to make an entitlement decision.

[para 23] From the action plan, and its timing, I conclude that Standard Life contacted the Organization and asked about the workplace dynamics as part of its assessment of the Complainant's claim.

[para 24] A letter sent by Standard Life to the Complainant on May 12, 2015, states:

We are writing with regards to your claim for Short Term Disability benefit.

Under the terms of your contract, the Definition of Disability states:

[...]

"A state of complete and continuous incapacity, resulting from illness of accidental injury, which wholly prevents the participant from performing the substantial duties of his own occupation."

Taking the above definitions into account, please note the following:

1. The Attending Physician Statement signed April 23, 2015 does not state a disabling diagnosis.
2. Also, the symptoms and restrictions are not severe enough to support disability from your own occupation.

Based on the definition of disability there has to be supporting medical evidence on file to establish total disability from work. Your claim has been declined.

[para 25] The May 7, 2015 note created by Standard Life's employee documents the information in her conversation with the Organization that she considered pertinent to the question of whether the Complainant was entitled to benefits. As set out in her subsequent decision letter, she considered that time from work had to relate solely to the foot condition, and could not be the result of other contributing factors, in order to be

compensable. The conversation with the employer she documented highlights information she considered important to making her decision regarding compensation, as it was information that could potentially cast light on possible reasons for the Complainant's disability, other than the injury itself. That she considered this information important to her decision is supported by the Action Plan, which indicated that she would ask the Organization whether there were any "underlying workplace issues".

[para 26] The consent the Complainant signed authorizes the employer to disclose three different kinds of information permitting the assessment of her claim: medical, financial, or other information deemed relevant by Standard Life. The consent is broad so as to enable Standard Life to obtain the information it requires to assess and adjudicate a claim for benefits. At the time a disability claim is made, it is not always clear what information will be relevant to the decision. If an insurer were limited to seeking consent for only a few specific records, as the Complainant suggests, it might find itself unable to make decisions based on evidence it considered relevant. In this case, it is clear that the Standard Life adjudicator considered information regarding the Complainant's workplace to be potentially relevant and decided to ask the Organization for that information. I conclude that the consent the Complainant signed encompasses the workplace information the Organization disclosed to Standard Life, given that Standard Life's adjudicator deemed it potentially relevant and sought it in order to assess the disability claim.

[para 27] I note the submission by Standard Life in related case file 004248 states that the workplace conflict did not in fact have any impact on the assessment and on the denial of the claim. I can make no judgement about this. However, I do note that such information may in some cases provide the assessor with a broader picture of what is or may be causing an employee's absences or inability to work. In a case in which there is some question as to whether a medical condition is the sole cause, it may be reasonable to try to ascertain whether there are such other "non-medical obstacles". This supports the view that the consent form the Complainant signed was intended to cover such situations.

[para 28] I acknowledge that the Complainant stated in her initial complaint to this office:

On March 26, 2015, following the Conflict Management Meeting, a "Conflict Resolution Agreement" was signed by myself, [an employee] and [another employee]. This agreement stated: All information exchanged in the meeting(s) and resolution items, shall be regarded as "without prejudice" communications for the purpose of creating a "win-win" atmosphere and shall be treated as "confidential".

[para 29] It is not clear that any of the information in the meetings and resolution items was provided to Standard Life by the Organization's employee. However, assuming that such information was disclosed, I find that the second consent authorized the disclosure of such information, regardless of any expectations of confidentiality. So long as the information was deemed relevant by Standard Life, the information was captured by the Complainant's consent.

[para 30] As I find that the Complainant consented to the disclosure when she signed the disability claim form, I find that the Organization did not fail to meet the requirements of section 7(1) of PIPA in relation to this disclosure.

Collection and Disclosure of the Complainant's personal information by the Organization's Agent

[para 31] In her initiating complaint to this office, the Complainant states:

On May 19, 2015, Mr. [...], provided me with a consent form authorizing [an agent] of Primrose Insurance and the TIPI Member Service Center Representatives to receive communications regarding my medical information from Standard Life. I understand that [the Organization's] representatives wished to get [the agent] involved in order to help my claim succeed. However, I specifically chose to not sign this form and in no other way did I communicate my consent to [the agent's] involvement.

Despite my non-consent to [the Organization] disclosing information about my claim to TIPI, on May 19, 2015, "[...]" a TIPI Senior Member Services Representative, emailed [the Standard Life adjudicator] saying "[the Complainant's] employer contacted me concerned as to why her claim was declined," and asking what specific information would be required in order to consider my condition a disability.

On December 22, 2015, I requested a copy of my disability file from Standard Life. Upon receipt of the file on March 10, 2016 and my review of the documents therein, I discovered the facts above in relation to [the Organization's] improper disclosure of my personal information concerning my employment circumstances and denial of disability benefits to Standard Life and TIPI.

[para 32] The Organization provided the following explanation of its decision to have its agent contact Standard Life regarding the Complainant's claim for benefits:

[The Organization] shared [the Complainant's] frustration with Standard Life's denial of her benefits. [The Organization] acted in good faith and sought to assist [the Complainant] in securing short-term disability and long-term disability benefits. [The Organization] also engaged their agent TIPI to further assist [the Complainant]. The attached e-mail exchange of May 15, 2015, shows [the Organization] working towards a solution to get coverage for [the Complainant].

[...]

On May 19, 2015, [the Organization] provided [the Complainant] with a consent form that would have allowed her doctors to disclose [the Complainant's] medical information to TIPI (the "Medical Consent Form"). The purpose of this was to authorize TIPI to advocate on [the Complainant's] behalf to Standard Life in respect of her disability claim. The Medical Consent Form did not seek [the Complainant's] consent for TIPI or [the Organization] to collect or disclose personal information to Standard Life. [The Organization] was already authorized to do so pursuant to [the Complainant's] authorization under the First Consent and the Second Consent, and by virtue of the PIPA provisions respecting the collection and disclosure of personal information.

[...]

[The Organization] and TIPI sought to assist [the Complainant] in obtaining a positive result from Standard Life and were fully authorized to communicate with Standard Life. Their advocacy on [the Complainant's] behalf may have been enhanced by obtaining medical information from [the Complainant's] doctors, however, [the Complainant] denied her consent to the sharing of medical information, as was her right. In any event, [the Organization] acted in good faith in making the necessary (and authorized) disclosures to Standard Life.

[para 33] The Organization attached an email from the Complainant informing it that Standard Life had rejected her claim for disability, leaving her in a difficult financial situation.

[para 34] The Organization also attached internal emails that had been distributed among employees of the Organization once the Complainant's email had been received. An email sent by the Vice President of Operations asks "Also, could we assist her by contacting Standard life to accept the claim".

[para 35] An email dated May 15, 2015, states, in response: "I have TIPI contacting Standard Life to see how we can get her claim pushed through the appeal process quicker and will hopefully have a plan later today."

[para 36] The Organization's agent emailed Standard Life stating:

"[The Complainant's] employer contacted me concerned as to why her claim was declined.

[The Complainant] works in the EMS department for this group as an occupational health nurse and 7 hours of her day is standing which she cannot do with this foot disability.

Please let us know what specific information you require for her condition to be considered a disability.

[para 37] From the foregoing email, I conclude that the Organization's agent disclosed information about the Complainant's employment and her disability to Standard Life. I find that the first and second consent do not authorize the Organization, or its agent, to disclose the Complainant's personal information to Standard Life in those circumstances. I say this because there was no indication that Standard Life required this information to assess the claim or considered it relevant.

[para 38] As I find that the Complainant did not consent to the disclosure of her personal information by the Organization's agent, and was not provided with notice of the Organization's intention to do so, I must now consider whether there are any provisions of PIPA that would authorize the collection and disclosure in the circumstances.

[para 39] Section 20 of PIPA sets out the circumstances in which an Organization may disclose personal information without consent. It states, in part:

20 An organization may disclose personal information about an individual without the consent of the individual but only if one or more of the following are applicable:

(a) a reasonable person would consider that the disclosure of the information is clearly in the interests of the individual and consent of the individual cannot be obtained in a timely way or the individual would not reasonably be expected to withhold consent [...]

Section 20 permits an Organization to disclose personal information when the collection and disclosure are clearly interests of the individual who is the subject of the information. If consent cannot be obtained in a timely way, *or* if the individual would not reasonably be expected to withhold consent, the Organization may collect and disclose in the interests of the individual.

[para 40] Based on the emails, I find that the Organization had its agent contact Standard Life in order to assist the Complainant to obtain benefits. In my view, this purpose is one that a reasonable person would consider clearly in the interests of the individual.

[para 41] I turn now to the question of whether it would have been possible to obtain the consent of the Complainant in a timely way or whether the individual could not reasonably be expected to withhold consent. Clearly, the Organization could have emailed the Complainant prior to contacting Standard Life to find out whether she consented to its discussing her case with Standard Life. However, from the emails, I conclude that it likely did not do so because it considered that she would consent to such contact if asked. I draw this conclusion because the Organization decided to contact Standard Life immediately after the Complainant had contacted it to explain the difficulties and stress she was experiencing because of Standard Life's refusal. The Organization might reasonably conclude from this that she sought its assistance and that it could provide this assistance by having its agent contact the insurer to obtain information about its criteria for claim acceptance and then assist the Complainant by ensuring that her application addressed the criteria.

[para 42] Section 20(a) will not authorize disclosure in every case that an organization decides to assist an employee. However, in this case, the personal information that was disclosed – the Complainant's occupation and the fact that her duties required her to stand for seven hours each shift – was information that was likely known to or inferable by Standard Life. Had it been sensitive information such as the Complainant's medical information, then it would not necessarily be reasonable to assume that providing it to Standard Life would assist the Complainant or that the Complainant would agree to its being provided to the insurer. However, that is not the case here. The email contained the Complainant's personal information only to the extent necessary to convey that the Organization felt the claim should be accepted and to request the insurer's claim acceptance criteria.

[para 43] To conclude, while I find that the Organization did not obtain the Complainant's consent to the disclosure of her personal information, I find that section 20(a) authorized it to disclose the information in the email in this case.

IV. ORDER

[para 44] I make this Order under section 52 of the Act.

[para 45] I confirm that the Organization's disclosures complied with the Act.

Teresa Cunningham
Adjudicator