

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER P2021-02

March 26, 2021

THE ANGLICAN DIOCESE OF CALGARY

Case File Number 004715

Office URL: www.oipc.ab.ca

Summary: The Complainant is a reverend of the Anglican Diocese of Calgary (the Organization). He made a complaint to this Office that the Organization disclosed his personal information without his consent when the Archbishop of the Organization sent copies of a letter regarding the reverend to over 100 Clergy, retired Clergy, and Diocesan members. The Complainant takes the position that the disclosure is in contravention of the *Personal Information Protection Act* (PIPA).

The Adjudicator determined that the Organization did not have authority to use or disclose the Complainant's personal information in the Archbishop's letter responding to the Complainant's actions.

Statutes Cited: AB: *Personal Information Protection Act*, S.A. 2003, c. P-6.5, ss. 1, 17, 18, 20, 21, 52, 56, *Personal Information Protection Act Regulation*, Alberta Regulation 366/2003, s.7

Orders Cited: AB: P2006-005, P2008-007, P2009-009, P2010-019, P2012-08, P2013-13, P2015-01, P2015-10, P2018-03

I. BACKGROUND

[para 1] The Complainant is a reverend of the Anglican Diocese of Calgary (the Organization). He made a complaint to this Office that the Organization disclosed his personal information without his consent when the Archbishop of the Organization sent copies of a letter

regarding the reverend to over 100 Clergy, retired Clergy, and Diocesan members. The Complainant takes the position that the disclosure is in contravention of the *Personal Information Protection Act* (PIPA).

[para 2] The Complainant states that in September 2016, he and several other Anglican ministers participated in a blessing of a civil marriage of a same-sex couple. Shortly after, the Complainant and the other ministers sent a memo addressed to the Archbishop, the officers of the Synod of the Organization, and the people of the four named parishes. The memo informed the recipients of the blessing and the Complainant's (and other ministers') reasons for participating.

[para 3] On September 30, 2016, the Complainant and the other ministers participated in a meeting with the Archbishop and the Chancellor of the Organization. At that meeting, the Complainant and each minister received a letter signed by the Archbishop. The Complainant's letter was addressed only to him (and not also the other ministers). In that letter, the Complainant was warned that any further participation in blessing same-sex unions would result in disciplinary measures. The Organization has disputed that this letter constitutes a disciplinary letter, so I will refer to it as the Response Letter.

[para 4] On November 24, 2016, the Archbishop send an email to the entire Clergy of Calgary with the following attachments:

- A letter to the clergy from the Archbishop discussing the issue (Clergy Letter);
- A copy of the memo from the Complainant and other ministers sent to the Archbishop, officers and parishes, giving their reasons for participating in the blessing of the civil marriage (Memo);
- The body of the letter from the Archbishop to the Complainant (Response Letter).

[para 5] The Complainant states that while the copy of the Response Letter attached to the email did not have the Complainant's name on it, the other attachments – especially the Memo from the Complainant and other ministers (which was attached in full) – made it clear who received the letter.

[para 6] The Complainant states that he does not know to whom the email was sent other than to note that it was addressed to the clergy of the Diocese of Calgary. He states that in 2016 there were approximately 65 parishes, each with a clergy person, curates and associates. He suspects that the email was also sent to some retired clergy and employees of the Diocese.

[para 7] The Complainant states that the Archbishop has the authority to discipline clergy (including the Complainant) under Canons 7 and 10 of the Synod of the Diocese of Calgary.

[para 8] The Complainant requested that the Commissioner investigate the complaint, and the matter has now proceeded to inquiry.

II. ISSUES

[para 9] The Notice of Inquiry, dated August 24, 2020, states the issues for inquiry as follows:

Did the Organization use and disclose the Complainant's 'personal information', or the Complainant's 'personal employee information', and if either or both is the case, did it do so in contravention of, or in compliance, with PIPA?

'Personal employee information' is narrower in scope than 'personal information', but the former also falls within the definition of the latter. The circumstances in which each may be collected, used and disclosed are different. The rules under PIPA permit collection, use and disclosure of information meeting the definition of "personal employee information" in specified employment circumstances. However, even if information that is personal employee information cannot be collected, used and/or disclosed in the circumstances by the organization, it may still be permissible for the organization to deal with it under the rules for permitting collection of personal information.

Therefore, in an inquiry in which information may meet the definition of personal employee information, then, in case it may not be dealt with by an organization as such, it is also necessary to ask whether this information can be collected, used and/or disclosed under the rules for collecting personal information.

The questions for this inquiry are, therefore:

Did the Organization use and/or disclose the Complainant's 'personal employee information', as that term is defined in section 1(1)(j) of PIPA? If so,

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

Did the Organization have the authority to use and/or disclose the information without consent, as permitted by sections 18 and 21 of PIPA?

If the Organization did not use and/or disclose the Complainant's 'personal employee information' as that term is defined in section 1(1)(j) of PIPA, or was not authorized to use and/or disclose such information under sections 18 and/or 21 of PIPA, the Commissioner will also address the following issues:

Did the Organization use and/or disclose the Complainant's 'personal information', as that term is defined in section 1(1)(k) of PIPA? If so,

Did the Organization use and/or disclose the information contrary to, or in compliance with, section 7(1) of PIPA (no use or disclosure without either authority or consent)? In particular,

Did the Organization have the authority to use and/or disclose the information without consent, as permitted by sections 17 and/or 20 of PIPA?

Did the Organization use and/or disclose the information contrary to, or in accordance with, sections 16 and/or 19 of PIPA (use and disclosure for purposes that are reasonable and to the extent reasonable for meeting the purposes)?

III. DISCUSSION OF ISSUES

[para 10] The facts in this inquiry and the arguments made by the parties are such the issues are better addressed in a different order than that in which they are listed in the Notice.

Status of the Organization

[para 11] As the Organization is a religious organization, the first issue is how the Act applies to it.

[para 12] PIPA defines “organization” in section 1(1)(i):

1(1)(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;

[para 13] Therefore, the Organization is an organization for the purposes of PIPA. Some religious bodies fall within the definition of “non-profit organization” in the Act. Section 56(1)(b) defines this term as follows:

56(1) In this section,

...

(b) “non-profit organization” means an organization

- (i) that is incorporated under the Societies Act or the Agricultural Societies Act or that is registered under Part 9 of the Companies Act, or*
- (ii) that meets the criteria established under the regulations to qualify as a non-profit organization.*

[para 14] The Organization provided a copy of the Ordinance of Incorporation, which refers to the Ordinances of the North-West Territories 1891 ch. 33, most recently amended in 1964 by *An Act to amend an Ordinance to Incorporate the Synod of the Diocese of Calgary and the Parishes*

of the said Diocese, S.A. 1964, c. 150. I conclude that the Organization is not incorporated under the *Societies Act*, *Agricultural Societies Act* or Part 9 of the *Companies Act*. There are currently no regulations under the Act that establish criteria to qualify as a non-profit organization. Therefore, the Act applies to the Organization in full.

Did the Organization use or disclose the Complainant's personal information?

[para 15] The issue refers to use or disclosure because providing information within an organization is sometimes a *use* of that information and sometimes is a *disclosure*. Where the information is provided to employees who need to know the information to perform their work duties (for example, a human resources employee may need to be given a copy of a disciplinary letter) it looks more like a *use* of information. If the information is provided outside of the organization or to separate areas within an organization for different purposes, it may be a disclosure.

[para 16] In this case, the Organization has argued that the Complainant is not its employee; rather the Complainant is employed by the parish. If this is the case, sending the email and attachments to other members of the Clergy was likely a disclosure. However, if all or some of the recipients are employees of the Organization, sending the email to those recipients may have been a use. In this case, the distinction does not make a difference to the outcome and I will discuss both possibilities.

[para 17] The Notice of Inquiry distinguishes between personal information and personal employee information. "Personal employee information" is a subset of personal information, which encompasses any information about an identifiable individual. In other words, if information is personal employee information, it is *also* personal information under the Act.

[para 18] Personal information is defined in section 1(1)(k) of the Act as information about an identifiable individual. In this case, the email attachments include a letter from the Archbishop, which sets out the events that took place, as discussed above (Clergy Letter). The Complainant is named in this letter. The second attachment is the Memo written and signed by the Complainant and the five other clergy. The last attachment is the body of the Response Letter given to the Complainant by the Archbishop. Though the latter does not have the Complainant's name on it, the Archbishop stated in the Clergy letter that it is the letter provided to the Complainant and other ministers who participated in the same-sex blessing. It is also clear from the other attachments that the Complainant is a recipient of this letter.

[para 19] Previous Orders of this Office have stated that information about individuals acting in a professional capacity (information about work duties) is not personal information within the meaning of the Act, unless it has a personal dimension. In Order P2006-005 the Commissioner stated (at para. 46-47, 50):

In Order P2006-004, I considered the meaning of "personal information about an individual" within the meaning of the Act:

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.

...

I agree with the Organization’s position that the “work product” or records produced by an employee in the course of employment is generally not the personal information of the employee. Pipeline reports, asset allocation reports, client agreements, tapes of calls, customer satisfaction and referrals are records created by employees as a part of their employment duties. These records are not about the employee as an individual, but about the task at hand.

[para 20] In Order P2009-009, the Director of Adjudication considered whether the views of a psychologist, recorded while treating a patient, had a personal dimension. She found (at para. 26):

Much of the information in a psychologist’s treatment file is, in my view, the personal information of the person being treated. I recognize that parts of such a file consist of information related to the psychologist – their thoughts and actions relating to the therapeutic relationship with the person being treated. However, I do not regard this as information “about” the psychologist. In the context of the Applicant’s treatment file, which records the Psychologist acting in her professional capacity, this information is not the Psychologist’s personal information. Numerous decisions of this office have held that records of a person’s “work product” are not “personal information” about them (unless there is something about the context which gives the information a personal dimension). Work product will often reflect the thought processes of its creator, yet in the present context it is more properly regarded as about the work than about the person doing it. In my view, the records in the treatment file form part of the “work product” of the Psychologist. The history of the therapy that they record is an important part of the therapy itself.

[para 21] Past Orders of this Office have also found that disciplinary situations will give the information a personal dimension such that it is not merely about the performance of work duties but is also personal information of the employee (see Orders P2012-08 at para. 19, P2015-01 at para. 12, P2015-10, at para. 15).

[para 22] To the extent that the email attachments describe actions taken by the Complainant in fulfilling his role as reverend that information is about the Complainant performing job duties, which does not indicate a personal dimension.

[para 23] However, the Memo to the Archbishop from the Complainant and other ministers speaks about the authors’ views about particular policies of the Church. It states in part:

While we realise that our actions on Saturday might cause discomfort among some members of the Diocese, we all feel that blessing [names redacted] was an act of holy obedience to the Holy Spirit and to our consciences. As priests in the Anglican Church, part of our ministry is to pronounce God's blessing (BAS p. 646). Since Scripture tells us that in Christ there is neither

male nor female (Galatians 3:28) it is unconscionable to discriminate on the basis of sexual orientation in the offering of that blessing. We ask that all members of the Diocese respect our consciences on this matter just as we continue to respect the consciences of those who differ from us. Saturday's service was a public witness to the diversity of the Anglican Church of Canada and to the church's compassionate inclusion of all its members, at least until such time as same-sex marriage is made available in the Anglican Diocese of Calgary

[para 24] In my view, discussions of conscience have a personal dimension, such that the opinions discussed are the personal information of the authors.

[para 25] The use or disclosure of the Memo is not the matter complained of, but it provides context to the Response letter that is. The Organization has stated that the Response Letter from the Archbishop is not a disciplinary letter; rather “[i]t is confirmation by the Bishop that same-sex blessings are not permitted in the Diocese and the further participation will be answered with discipline” (rebuttal submission at para. 12).

[para 26] I understand that the Organization does not consider the Response Letter to be a disciplinary letter because it had not yet undertaken formal disciplinary steps. However, the Response Letter clearly has disciplinary or corrective implications. It is the type of communication that would be filed on an employee's personnel file, as a written warning preceding formal disciplinary action. For this reason – whether or not the Response Letter constitutes part of the Organization's formal disciplinary process or is preliminary to that – the Complainant's information in the Response Letter has a personal dimension and it his personal information for the purposes of the Act.

[para 27] Regarding the disclosure, the Complainant has provided me with a copy of the email sent by the Archbishop, along with the three attachments. It is clear that the information about the Complainant was sent to recipients other than the Complainant.

[para 28] The Organization has argued that it did not use or disclose the Complainant's personal information. It states that the Complainant and five other priests sent the Memo to the Archbishop, the Officers of the Synod of the Anglican Diocese of Calgary, and four parishes. As noted, the Memo informed the recipients of the blessing and the Complainant's (and others') reasons for participating. The Organization argues that this Memo is now a public document. It states (initial submission at para. 19):

It is my submission that no personal information was disclosed. The matters and issues in the correspondence, the subject of this complaint, was made all very public, and made public by the Complainant in both the conduct of the service and the circulation of the Memo.

[para 29] The Complainant argues that the contents of the Memo are not the same as the information at issue in this inquiry. The information the Complainant objects to having been used or disclosed is the Archbishop's response to the Complainant's actions; specifically, the Response Letter that the Complainant states reprimands him, and that states the next incident will result in disciplinary action. So even if the information in the Memo was disclosed to a wide audience by the Complainant, the Response Letter was not.

[para 30] As I have found that this information has a personal dimension and constitutes the Complainant's personal information, I find that the Organization used or disclosed the Complainant's personal information when the Archbishop sent the email.

Did the Organization use or disclose the Complainant's 'personal employee information', as that term is defined in section 1(1)(j) of PIPA?

[para 31] As stated above, "personal employee information" is a subset of personal information, which encompasses any information about an identifiable individual. Personal employee information is information about an employee that is reasonably required to establish, manage or terminate the employment relationship.

[para 32] Section 18 permits an Organization to use personal employee information for specified purposes, without the consent of the employee. Section 21 permits an Organization to disclose personal employee information for specified purposes, without the consent of the employee. These provisions state:

18(1) An organization may use personal employee information about an individual without the consent of the individual if

(a) the information is used solely for the purposes of

(i) establishing, managing or terminating an employment or volunteer-work relationship, or

(ii) managing a post-employment or post-volunteer-work relationship, between the organization and the individual,

(b) it is reasonable to use the information for the particular purpose for which it is being used, and

(c) in the case of an individual who is a current employee of the organization, the organization has, before using the information, provided the individual with reasonable notification that the information is going to be used and of the purposes for which the information is going to be used.

(2) Nothing in this section is to be construed so as to restrict or otherwise affect an organization's ability to use personal information under section 17.

21(1) An organization may disclose personal employee information about an individual without the consent of the individual if

(a) the information is disclosed solely for the purposes of

(i) establishing, managing or terminating an employment or volunteer-work relationship, or

(ii) managing a post-employment or post-volunteer-work relationship, between the organization and the individual,

(b) it is reasonable to disclose the information for the particular purpose for which it is being used, and

(c) in the case of an individual who is a current employee of the organization, the organization has, before disclosing the information, provided the individual with reasonable notification that the information is going to be disclosed and of the purposes for which the information is going to be disclosed.

(2) An organization may disclose personal information about an individual who is a current or former employee of the organization to a potential or current employer of the individual without the consent of the individual if

(a) the personal information that is being disclosed was collected by the organization as personal employee information, and

(b) the disclosure is reasonable for the purpose of assisting that employer to determine the individual's eligibility or suitability for a position with that employer.

(3) Nothing in this section is to be construed so as to restrict or otherwise affect an organization's ability to disclose personal information under section 20.

[para 33] Section 1(1)(j) defines “personal employee information” as follows:

1(1)(j) “personal employee information” means, in respect of an individual who is an employee or a potential employee, personal information reasonably required by an organization that is collected, used or disclosed solely for the purposes of establishing, managing or terminating

(i) an employment relationship, or

(ii) a volunteer work relationship

between the organization and the individual but does not include personal information about the individual that is unrelated to that relationship;

[para 34] This definition of personal employee information is context-dependent. In order for personal information to be personal employee information, it must be collected, used, or disclosed solely for the purpose of establishing, managing, or terminating the employment relationship.

[para 35] In order for the ‘personal employee information’ provisions to apply in this case, the Complainant would have to be employed by the Organization. The Complainant argues that he is employed by the Organization (the Diocese); however, the Organization argues that the Complainant is actually employed by the parish, which is a separate legal entity. The Organization argues that the relationship between it and the Complainant is more akin to a licensor/licensee relationship.

[para 36] The Complainant has provided a copy of his Record of Employment, which lists the Organization as his employer. This seems determinative of the matter; however, I do not need to make a finding on this point. This is because, for the reasons I will discuss, even if the Complainant is an employee of the Organization, the Organization was not permitted to use or disclose the information in the Response Letter under the provisions for personal employee information.

[para 37] Whether or not the Complainant is employed by the Organization, the parties agree that the Archbishop has the authority to discipline the Complainant. The parties also agree that the Response Letter was provided to the Complainant under that authority.

[para 38] If the Complainant is an employee of the Organization, it seems clear that the Complainant's personal information was used by the Archbishop to manage the Complainant's employment. In some circumstances, it is also reasonable to disclose such information to manage the employment relationship. However, in this case, the Organization hasn't addressed why it was reasonable to circulate the Response Letter among the recipients in the email.

[para 39] The Organization states (at para. 22, initial submission, references omitted):

It is argued that the Memo forwarded by the Complainant to the Parties identified therein, made the actions of the Complainant in conducting the blessing of a same sex marriage, the acknowledgement that it was contrary to the Bishop's position on the issue and his justification for having done so, issues for public debate. Furthermore it was a public challenge of the Bishop's position and given the wide circulation of the Memo, it was a position to be debated in the public forum. It is submitted that by circulating the Memo this action by the Complainant constitutes implied consent to the subsequent circulation of the Bishop's s letter to the Priests.

[para 40] The Organization has also stated that the Archbishop had received many questions about the same-sex blessing and his response. The Clergy letter written by the Archbishop states:

I am writing to you in response to the number of inquiries I have received about the blessing of a civil marriage done for a same sex couple which took place in mid-September of this year at St. Stephen's, Calgary. As people in the Diocese have begun to speculate on exactly what took place and what response has been made, I believe it is appropriate to provide a simple and clear accounting.

[para 41] The Organization states that the Response letter was attached to the email with the Clergy letter to "confirm for the record that no discipline had taken place and that the way forward in addressing the divisive and contentious debate over same sex blessings was by way of generous listening and dialogue" (initial submission at para. 30).

[para 42] Encouraging future debate and discussion regarding its policies is certainly a valid activity; however, it is not the same as managing the employment relationship with particular employees. If the email recipients were not involved with managing the Complainant's employment, then the Response Letter was not provided to them *for the purpose of* managing the Complainant's employment, as required under sections 18(1)(a) and 21(1)(a). Therefore, those provisions are not met.

[para 43] Had the Organization argued that it was appropriate to have all of the email recipients involved in determining how to respond to the Complainant's participation in a same-sex blessing (i.e. how to manage the Complainant's employment in light of his participation), then an argument might have been made that it was authorized to share the Response letter with those who were involved in that determination. However, the Organization did not take this

position. Rather, the submissions indicate that only the Archbishop and Chancellor were involved in the decision.

[para 44] Because the requirements of sections 18(1) and 21(1) are not met, the Organization was not authorized to use or disclose the information in the Response Letter as personal employee information, assuming it is the Complainant's employer. If the Organization is not the Complainant's employer, these provisions could not apply. Either way, the result is the same.

[para 45] It does not necessarily follow that the Organization did not have authority to use or disclose the Complainant's *personal information* (as opposed to *personal employee information*). The provisions authorizing the use or disclosure of personal information can apply if the relationship of the Complainant and Organization is that of licensee/licensor, if the relationship is that of employee/employer, or if there is some other relationship.

Did the Organization have consent to use or disclose the Complainant's personal information?

[para 46] The Organization's submission cited above argues that the Complainant had implicitly consented to the circulation of the Response letter.

[para 47] Section 8 of the Act sets out the manner in which organizations can obtain consent. The relevant parts of the provision state:

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) An individual is deemed to consent to the collection, use or disclosure of personal information about the individual by an organization for a particular purpose if

- (a) the individual, without actually giving a consent referred to in subsection (1), voluntarily provides the information to the organization for that purpose, and*
- (b) it is reasonable that a person would voluntarily provide that information.*

...

(3) Notwithstanding section 7(1), an organization may collect, use or disclose personal information about an individual for particular purposes if

(a) the organization

- (i) provides the individual with a notice, in a form that the individual can reasonably be expected to understand, that the organization intends to collect, use or disclose personal information about the individual for those purposes, and*
- (ii) with respect to that notice, gives the individual a reasonable opportunity to decline or object to having his or her personal information collected, used or disclosed for those purposes,*

(b) the individual does not, within a reasonable time, give to the organization a response to that notice declining or objecting to the proposed collection, use or disclosure, and

(c) having regard to the level of the sensitivity, if any, of the information in the circumstances, it is reasonable to collect, use or disclose the information as permitted under clauses (a) and (b).

(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 48] The Organization did not refer to section 8 of the Act, or indicate which manner of consent it believes may apply.

[para 49] It is clear that the Complainant did not explicitly consent to the use or disclosure of the Response letter within the terms of section 8(1). Section 8(2) seems more applicable from the Organization's submissions. This provision deems an individual to consent to the collection, use or disclosure of personal information where the individual provided the information to the Organization for that purpose. This provision applies where the purpose for the collection, use or disclosure is sufficiently obvious at the time the individual provides the information such that it is apparent without having to be stated outright.

[para 50] While the Complainant did provide information to the Organization about his participation in the same-sex blessing via the Memo, it can't be said that he provided the Archbishop's response, which is the information he has complained about being used or disclosed. The Archbishop's Response letter clearly contains different information than what was in the Memo. Therefore, even if the Complainant could be deemed to have consented to the circulation of the Memo he sent to the Archbishop, he cannot be said to have deemed to consent to the circulation of the Archbishop's subsequent Response letter.

[para 51] Even if the information in the Memo and the Response letter were the substantially the same, in order for section 8(2) to be applicable, the purpose of circulating the Response letter among the clergy would have had to have been obvious to the Complainant at the time he provided the information to the Archbishop. Order P2018-03 considered a similar situation in which an individual's actions at a property were caught on the property manager's overt video surveillance system, and used to investigate a complaint about the individual's actions. It was determined that the existence of the video surveillance and its purpose (to investigate incidents that occur on the property) were obvious to the individual at the time of his actions. He was therefore deemed to have consented to the collection and use of his information by the organization, for the purpose of the investigation. However, the organization subsequently disclosed the information to the individual's employer. The Order finds that the Complainant could not be deemed to have consented to this disclosure; the suggestion that this disclosure was a purpose obvious to the individual at the time of his actions was found to be an undue strain of the scope of section 8(2) (at para. 26). The same can be said here about the circulation of the Response letter among the clergy.

[para 52] Section 8(3) also permits another kind of consent, often referred to as "opt-out" consent. However, the Complainant was not given an opportunity to opt out of the circulation of the Response letter, so that provision cannot apply in this case.

[para 53] I find that the Complainant did not consent to the use or disclosure of his personal information when the Organization circulated the Response letter.

Did the Organization have the authority to use or disclose the information without consent, as permitted by sections 17 and/or 20 of PIPA?

[para 54] Sections 17 and 20 permit an organization to use or disclose personal information without consent in particular circumstances. The Organization did not refer to any particular authority under section 17 or 20 as authority to use or disclose the Complainant's information.

[para 55] The only provisions in sections 17 and 20 that could reasonably apply, based on the submissions before me, are the provisions authorizing the use or disclosure of publicly available information, and provisions relating to a use or disclosure authorized or required by an enactment, or where it is reasonable for the purposes of an investigation or legal proceeding. Those provisions state:

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

...

(b) the use of the information is authorized or required by

(i) a statute of Alberta or Canada

(ii) a regulation of Alberta or a regulation of Canada

(iii) a bylaw of a local government body, or

(iv) a legislative instrument of a professional regulatory organization;

...

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

(e) the information is publicly available as prescribed or otherwise determined by the regulations;

...

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:

...

(b) the disclosure of the information is authorized or required by

(i) a statute of Alberta or Canada

(ii) a regulation of Alberta or a regulation of Canada

(iii) a bylaw of a local government body, or

(iv) a legislative instrument of a professional regulatory organization;

...

(j) the information is publicly available as prescribed or otherwise determined by the regulations;

...

(m) the disclosure of the information is reasonable for the purposes of an investigation or a legal proceeding

...

[para 56] I will address sections 17(e) and 20(j) (publicly available information), sections 17(d) and 20(m) (use or disclosure for an investigation or legal proceeding), and 17(b) and 20(b) (authorized by an enactment), in that order.

Publicly available information

[para 57] Section 7 of the Regulation defines what “publicly available information” is, for the purposes of the Act. It is a lengthy section and so I will summarize it rather than citing it entirely. Publicly available information is:

- information in a telephone directory available to the public, consisting of contact information;
- the information consists of business contact information and is contained in a professional or business directory, listing or notice;
- personal information contained in a government or non-governmental registry but only if the collection, use or disclosure relates directly to the purpose for which the registry is established;
- personal information contained in a record of a quasi-judicial body, if the collection, use or disclosure relates directly to the purpose for which the information appears in the record;
- the personal information is contained in a publication such as a magazine, book or newspaper available to the public and the individual provided that information;
- personal information under the control of an organization outside Alberta that would, if collected from within Alberta, would fall within one of the above categories.

[para 58] The Complainant’s information contained in the Response letter does not fall within any of these categories. As discussed above, the Organization had argued that the information in the Memo is essentially public information as it was widely disseminated by the authors, including the Complainant. While the Memo is not at issue in the inquiry, it is worth noting that despite the fact that the Complainant himself sent it to many recipients, it would nevertheless not fall within the definition of “publicly available information” for the purposes of sections 17(e) or 20(j).

Information reasonable for an investigation or legal proceeding

[para 59] In the section of this Order discussing personal employee information, I said that an argument might have been made that the use or disclosure of the Response Letter was for the purpose of determining how to manage the Complainant’s employment in light of his

participation in the same-sex blessing, if all of the email recipients were involved in that determination.

[para 60] A similar argument might also have been made even if the Organization is not the Complainant's employer. The Organization confirms that the Archbishop has authority to address the Complainant's participation in the same-sex blessing, including discipline. The Organization argues that this authority is more akin to a licensor's ability to regulate a licensee.

[para 61] The Organization states (initial submission at paras. 23-24, citations omitted):

The Priests of the Diocese function under the authority of a License granted by the Bishop.

In the License, the [Priest] gives an "Oath of Obedience" to the Bishop. The License relates to ecclesiastical matters whereby the Priest acknowledges the Bishop's authority with respect to ecclesiastical matters.

[para 62] Section 1(1)(f) of the Act defines the term "investigation" for the purposes of the Act. It states:

1(1) In this Act,

(f) "investigation" means an investigation related to

(i) a breach of agreement,

(ii) a contravention of an enactment of Alberta or Canada or of another province of Canada, or

(iii) circumstances or conduct that may result in a remedy or relief being available at 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 63] The Organization has argued that the Complainant's participation in the same-sex blessing, and the Memo signed by the Complainant, challenged the Archbishop's authority on this matter. Possibly it might have been argued that the Complainant's actions constituted a breach of an agreement.

[para 64] It is not clear from the information before me whether there was an 'investigation' into the Complainant's actions. In this case, the Complainant informed the Archbishop of his actions and reasons for his actions, via the Memo. The Response Letter from the Archbishop to the Complainant seems to comprise the Archbishop's response to the Complainant's actions; in other words, if there was an investigation, that letter (and the meeting during which it was provided to the Complainant) seem to have concluded the matter, at least for the time being.

[para 65] Possibly there were other actions or inquiries undertaken by the Archbishop other than what has been told to me. Even if there was an investigation within the terms of sections 17(d) and/or 20(m), it is not clear how the Archbishop's email to the clergy – or the use or disclosure of the Response Letter in that email – was related to it. The Organization's

submissions indicate that only the Archbishop and Chancellor were involved in deciding how to respond to the Complainant's actions. The email sent by the Archbishop to the clergy communicated the relevant events and response, after they were concluded. Therefore, I have no information before me that indicates the use or disclosure was for the purpose of an investigation.

Authorized or required by an enactment

[para 66] Regulatory bodies often have statutory responsibilities and authority, which may permit the use and disclosure of personal information to fulfill their statutory duties.

[para 67] For example, in Order P2010-019, the adjudicator found that the Real Estate Council of Alberta (RECA) had authority under section 55 of the *Real Estate Act*, R.S.A. 2000, c. R-5, to publish information respecting disciplinary actions taken against a regulated member of RECA under that Act.

[para 68] In this case, the Organization has not pointed to any enactment that might have authorized it to use or disclose the Complainant's personal information when it emailed the Response letter to the recipients.

Conclusion regarding sections 17 and 20

[para 69] There are no other provisions under section 17 or 20 that appear relevant to the facts before me. The Organization has therefore not met its burden to show that the use and/or disclosure of the Complainant's personal information was authorized.

[para 70] The Archbishop may have sent the email as a way to communicate to clergy that its policies on the issue will be enforced. It is clearly within the authority of any organization to communicate and enforce its policies. PIPA places limits only on the collection, use or disclosure of personal information in this communication. In this case, the Organization could have informed the clergy that certain policies had recently been contravened, communicated that those policies are still in force, and let the clergy know how they will be enforced. While this may have implied that the Complainant had been disciplined (or not) in the manner described, implications and express disclosure are quite different where PIPA is concerned. In other words, it seems to me that the Organization could have fulfilled its purpose without disclosing the Complainant's personal information in the Response letter.

[para 71] I also understand that the Organization is fairly unique as a religious organization employing (or licensing) clergy. But under the Act, all organizations must follow the same rules. Had the situation been one of a retail store and an employee contravening a policy, the outcome would have to be the same as in this case. For example, a store manager may have decided to accept a return against store policy, arguing that the policy was not in line with other retailers. The store owner has the authority to discipline the manager. It also has the authority to communicate with all store employees that a contravention of the return policy had occurred, reminding them of the policy, and also communicating the possible repercussions of contravening the policy. However, the store owner could not disclose a disciplinary letter given

to an identified store manager, without some authority under the Act. The same could be said of a regulatory body disciplining a member, unless the regulatory body had clear authority to disclose the information as the regulatory body for realtors did in Order P2010-019.

[para 72] Section 6(1) of the Act requires an organization to develop and follow policies and practices that are reasonable for the organization to meet its obligations under the Act. I will order the Organization to review its current policies, or create policies, regarding how it handles the personal information of clergy. I will also order the Organization to train its staff regarding its obligations under the Act.

Did the Organization use or disclose the information contrary to, or in accordance with, sections 16 and/or 19 of PIPA (use and disclosure for purposes that are reasonable and to the extent reasonable for meeting the purposes)?

[para 73] As I have found that the Organization did not have authority to use or disclose the Complainant's personal information, it is not necessary for me to address sections 16 and 19.

IV. ORDER

[para 74] I make this Order under section 52 of the Act.

[para 75] I find that the Organization used or disclosed the Complainant's personal information without authority.

[para 76] I order the Organization to review its policies regarding how it handles the personal information of clergy; if it does not currently have policies, the Organization is to develop a policy as set out in section 6(1) of the Act. I also order the Organization to train its staff regarding its obligations under the Act.

[para 77] I order the Organization to notify me and the Complainant in writing within fifty days of receiving this Order, that it has complied with it.

Amanda Swanek
Adjudicator