

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER P2021-11**

October 29, 2021

**ROGERS INSURANCE LTD.**

Case File Number 006314

**Office URL:** [www.oipc.ab.ca](http://www.oipc.ab.ca)

**Summary:** An individual (the Complainant) made a complaint that her insurance broker, Rogers Insurance Ltd. (the Organization), collected her personal information in contravention of the *Personal Information Protection Act* (PIPA or the Act) when it was informed by the Complainant's insurance company that the Complainant had settled her insurance claim with her insurance company, and the amount of the settlement.

The Adjudicator found that the Complainant had consented to the Organization collecting her personal information from her insurance company and that the collection of her personal information by the Organization complied with the Act.

**Statutes Cited:** **AB:** *Personal Information Protection Act*, S.A. 2003, c. P-6.5, ss. 1, 3, 4, 7, 8, 9, 14, and 52; *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, s. 1; **ON:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, s. 2.

**Orders Cited:** **AB:** Orders P2006-001, P2006-004, P2007-011, P2008-007, P2009-001, P2010-017, P2012-05, P2014-01, P2015-03, P2015-05, P2021-01, and P2021-09; **ON:** Order MO-2040.

**Decisions Cited:** **AB:** P2011-D-003.

**Cases Cited:** **AB:** *Leon's Furniture Ltd. v. Alberta (Information and Privacy Commissioner)*, 2011 ABCA 94, *Peter Choate & Associates Ltd. v. Dahlseide*, 2014 ABQB 117, *Edmonton (City) v. Alberta (Information and Privacy Commissioner)*, 2016 ABCA 110.

## I. BACKGROUND

[para 1] An individual (the Complainant) complained that her insurance broker, Rogers Insurance Ltd. (the Organization), collected her personal information in contravention of the *Personal Information Protection Act*, S.A. 2003, c. P-6.5 (PIPA or the Act) when it was informed by the Complainant's insurance company that the Complainant had settled her insurance claim with her insurance company, and the amount of the settlement.<sup>1</sup>

[para 2] The Commissioner authorized a Senior Information and Privacy Manager to investigate and attempt to settle the matter; however, the matter was not resolved.

[para 3] The Complainant requested and the Commissioner agreed to conduct an inquiry and delegated her authority to conduct it to me.

## II. ISSUES

[para 4] The Notice of Inquiry, dated August 28, 2020, set out the issues for this inquiry as follows:

1. Did the Organization collect "personal information" about the Complainant as that term is defined in section 1(1)(k) of PIPA?
2. If the answer to the first issue is "yes", did the Organization collect the information contrary to, or in compliance with, section 7(1)(a) and (b) of PIPA (Consent required)? In particular,
  - a. Did the Organization have the consent to collect the Complainant's personal information under section 8 of PIPA (Form of Consent)?
  - b. If the Organization did not have the Complainant's consent to collect the Complainant's personal information, did the Organization have the authority to collect the information without consent, as permitted by section 14 of PIPA (Collection without consent)?

[para 5] In the Complainant's Request for Review/Complaint, the Complainant also included a complaint that the Organization had not provided her with the name of the individual with the insurance company who disclosed the information to the Organization.<sup>2</sup> The Complainant did not raise this as an issue in her Request for Inquiry and it has not been included as an issue in this inquiry.

[para 6] This inquiry involves only the Complainant's complaint that the Organization collected the Complainant's personal information in contravention of the Act when it was

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<sup>1</sup> Complainant's Request for Review/Complaint dated May 18, 2017.

<sup>2</sup> *Ibid.*

informed by the Complainant's insurance company that the Complainant had settled her insurance claim with the insurance company, and the amount of the settlement.

[para 7] This inquiry does not involve the Complainant's insurance company or whether the disclosure of the information by the insurance company to the Organization complied with the Act. I make no findings with respect to the disclosure of the information by the Complainant's insurance company to the Organization.

### III. DISCUSSION OF ISSUES

#### 1. Did the Organization collect "personal information" about the Complainant as that term is defined in section 1(1)(k) of PIPA?

[para 8] The definition of "personal information" is set out in section 1(1)(k) of the Act as follows:

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

[para 9] In the Complainant's Request for Review/Complaint, the Complainant set out her complaint as follows:<sup>3</sup>

We had a civil claim against our insurance company [name of insurance company]. They suggested a mediation hearing which we attended. A settlement was reached and it was our understanding that the discussions and disclosure of the settlement amount at the mediation were confidential only to those in attendance.

Rogers Insurance was our insurance broker and were not in attendance at the mediation hearing. As they were not helpful in our insurance claim we approached them after the mediation hearing to discuss their errors and omissions regarding their support in our insurance claim. At a meeting with Rogers Insurance they stated the settlement amount we had received from the mediation hearing. We had not informed them of this amount and asked them to provide us with the name of the person(s) who told them the amount of our settlement. After several e-mails requesting this information they are not prepared to provide this information or to enter into any more communication on this issue. We are concerned that the fact Rogers Insurance had received this confidential information, our ability to deal with the matter of their errors and omissions has been compromised. Furthermore, Rogers refusal to identify the source respecting the release of confidential information, prevents us from undertaking appropriate action against that party.

We feel this is a breach of privacy – do you?

[para 10] In the Complainant's Request for Inquiry, the Complainant provided the following information under the heading "Summary of Issues":<sup>4</sup>

III. Bullet #3: the meeting with Rogers Insurance after our settlement was not to assist us in the settlement of our insurance claim with [name of insurance company]. We met to discuss

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<sup>3</sup> *Ibid.*

<sup>4</sup> Complainant's Request for Inquiry dated May 28, 2018.

the soft costs we incurred in settling our insurance claim. It was our contention that Rogers Insurance, as our Broker, failed to work on our behalf respecting our original insurance claim. We believe that this failure falls under the category of “Errors and Omissions”. Consequently, as we assumed that role, we were seeking compensation from Rogers Insurance for the work we undertook. This had nothing to do with our negotiated settlement with [name of insurance company], but everything to do with a proposed settlement with Rogers.

IV. Bullet #4: the meeting with Rogers Insurance was not about being unhappy with the settlement of our claim with [name of insurance company] but rather we were unhappy with the insurance claims services provided to us by our then Broker Rogers Insurance prior to us having to do all the work towards a civil claim against [name of insurance company].

V. Bullet #6: the meeting with Rogers Insurance had nothing to do about the settlement received from [name of insurance company]. At the mediation meeting which Rogers Insurance was not present we were informed by the mediator that anything said or agreed upon at the mediation meeting was strictly confidential to those in attendance.

[para 11] As I understand the Complainant’s complaint, the information which the Complainant complains was collected by the Organization in contravention of the Act, is the fact that the Complainant had settled her insurance claim with her insurance company, and the amount of the settlement. The Complainant takes the position that this is personal information about her under the Act.<sup>5</sup>

[para 12] With its initial submission, the Organization provided an affidavit sworn by the owner (the Owner) of the Organization (the Affidavit). In the Affidavit, the Owner stated the following:<sup>6</sup>

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2. Rogers is an insurance broker and placed a home-owners policy for [name of Complainant] (the “Complainant”) with [name of insurance company] (the “Policy”).
3. [Name of insurance company] denied a claim by the complainant on August 5, 2015. Rogers reported the claim on behalf of the Complainant, but coverage was denied by [name of insurance company].
4. The Complainant and her husband (the “[last name of Complainant and her husband]”) were unhappy with this denial and requested that Rogers re-open a second claim. Rogers did this on their behalf, however [name of insurance company] again denied coverage.
5. On December 10, 2016 the [last name of Complainant and her husband] attended at Rogers’ offices and met with me (the “December Meeting”). Among other things, the [last name of Complainant and her husband] expressed dissatisfaction with how Rogers had not been able to advance their claim with [name of insurance company]. I explained to them that as an insurance broker, we do not pay claims or make the final

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<sup>5</sup> Complainant’s initial submission dated September 15, 2020 at paras. 1 and 3.

<sup>6</sup> Affidavit of Owner sworn December 8, 2020.

decision with respect to claims; that is the responsibility of [name of insurance company] (who are in a contractual relationship with the [last name of Complainant and her husband] in respect of the Policy).<sup>7</sup>

6. The [last name of Complainant and her husband] were not satisfied with this and wanted Rogers to pay them \$[amount] for the time and stress to them in trying to resolve their claim the “Compensation Request”. I declined this request and advised them of my opinion that Rogers had acted professionally in assisting them in seeing whether coverage under the Policy could be found. Ultimately, it was [name of insurance company] who denied coverage.
7. During the course of the December meeting, the [last name of Complainant and her husband] made no mention of the fact that they:
  - a. had advanced a civil action against [name of insurance company] in respect of its denial of coverage; or
  - b. were ultimately successful in settling the matter for \$[amount] with [name of insurance company] (the “Settlement Information”).
8. I am advised by [name and title of Organization’s employee], and do verily believe that, following the December meeting, [name of employee] contacted [name of insurance company] again on the off chance that there might be some further consideration of their position with respect to coverage of the [last name of Complainant and her husband] claim (the “[name of insurance company] Call”). During the course of this call, [name of employee] was advised by someone in the [name of insurance company] claims department of the Settlement Information. That is, that the [last name of Complainant and her husband] had commenced an action against [name of insurance company] in respect of their claim which they ultimately settled for \$[amount].
9. As set out in paragraph 7 herein, I was not aware of the Settlement Information at any time prior to the [name of insurance company] Call. Further, I am advised by [name of employee] and do verily believe that at no time during the [name of insurance company] Call did she initiate any request of [name of insurance company] that they provide her with the Settlement Information.
10. Following the December Meeting and the [name of insurance company] Call, I emailed the [last name of Complainant and her husband] at 4:27 PM on December 10, 2016 (the “December 10 Email”) to summarize our position – that Rogers had done everything possible to assist them in respect of their claim – and advised them that we were aware of the Settlement Information. The December 10 Email is attached to this my Affidavit as Exhibit “A”.
11. The [last name of Complainant and her husband] sent Rogers a letter on June 13, 2017 (the “June Letter”) *inter alia* requesting the source of the “confidential information respecting a matter between [the [last name of the Complainant and her husband]] and [their] former insurer” – which I understood to mean the Settlement Information.

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<sup>7</sup> The Organization subsequently advised that to the best of the Owner’s recollection, the in-office meeting took place on December 9, 2016.

Rogers declined to provide this information. The June Letter is attached to this my Affidavit as Exhibit “B”.

12. Finally, my knowledge of the Settlement Information could not have had any effect on my decision decline [sic] the [last name of Complainant and her husband]’s Compensation Request, as I was not aware of the Settlement Information when such request was made (as I only learned of the Settlement Information after the December Meeting with the [last name of Complainant and her husband], which is when they made the Compensation Request). Further, it is my belief that Rogers went well beyond its obligations as an insurance broker in this case and that there is no basis whatsoever for the Compensation Request.

...

[para 13] Whether the Complainant is entitled to any compensation from the Organization because of its handling of her claim with her insurance company is outside the scope of my authority and the jurisdiction of this office.

[para 14] The only issues to be determined in this inquiry are whether the fact that the Complainant had settled her insurance claim with her insurance company, and the amount of the settlement, is personal information about the Complainant and, if so, whether the Organization collected the personal information in contravention of the Act.

[para 15] Section 3 of the Act sets out the purpose of the Act. It states:

*3 The purpose of the 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.*

[para 16] Section 4(1) of the Act states:

*4(1) Except as provided in this Act and subject to the regulations, this Act applies to every organization and in respect of all personal information.*

[para 17] It is only where “personal information”, as that term is defined in the Act, has been collected, used, or disclosed by an organization, that this Office has jurisdiction to determine whether the collection, use, or disclosure of the information complies with the Act.

[para 18] Put another way, information that is not personal information, is not subject to the Act, and this Office does not have the jurisdiction to determine whether information that is not personal information, has been properly collected, used, or disclosed by an organization under the Act.

[para 19] In its initial submission, the Organization submitted that:<sup>8</sup>

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<sup>8</sup> Organization’s initial submission dated December 8, 2020 at page 1.

- a) The information provided by [name of insurance company] to the Respondent in respect of the Complainant’s settlement with [name of insurance company] (the “Settlement Information”) does not meet the definition of “personal information” as set out in s. 1(k) [sic] of PIPA; and,
- b) Even if the Settlement Information meets the definition of “personal information” in PIPA, the Respondent did not “collect” the Settlement Information from [name of insurance company].

[para 20] Citing the decision of the Alberta Court of Appeal in *Leon’s Furniture Ltd. v. Alberta (Information and Privacy Commissioner)*, 2011 ABCA 94 (*Leon’s*) at paras. 34 and 47, the Organization submitted (emphasis in submission):<sup>9</sup>

#### A. The Law

Section 3 of PIPA expressly states its overall purpose. As set out by the Court of Appeal of Alberta, s. 3 is the most important provision of PIPA and key to the interpretation and application of that statute:

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

PIPA recognizes two competing values – the right to protect information, and the need to use it – without giving predominance to either of the two competing values. Any interpretation which holds that one must always prevail over the other is likely to be unreasonable.

Section 1(1)(k) of PIPA defines “**Personal information**” as “. . . information about an identifiable individual.”

As set out in the Alberta Court of Appeal decision in *Leon’s*, the “identifiable individual” term has two components:

1. The individual must be “identifiable”. Generic and statistical information is thereby excluded, and the personal information must have some precise connection to one individual.
2. The information must relate to an individual. Information that relates to objects or property is, on the face of the definition, not included. The key to the definition is the word “identifiable.”

PIPA is therefore designed to regulate and protect information that is uniquely connected to one person. An important (although not the only) purpose of PIPA is to control the use of information that would enable “identity theft”, that is, information that is used to distinguish one individual from another in financial and commercial transactions. This can be seen by reviewing the type of information that is dealt within the more specific provisions and

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<sup>9</sup> *Ibid.*, at pages 2 – 3.

exceptions in the Act. The definition is not primarily aimed at information about that individual's opinions, choices and status in life.

## B. Argument

Based on the definition of “personal information” in PIPA and the guidance set out by our Court of Appeal in the *Leon's* decision with respect to the interpretation of section 3 of [PIPA], [it] is respectfully submitted that the Settlement Information is not the type of information that would enable identity theft (which PIPA is aimed at preventing), as it is not the kind of information that could be used to distinguish one individual from another in financial and commercial transactions. Rather, it is submitted that the Settlement Information relates to information with respect to the Complainant's ‘status in life’ and is therefore not “personal information.”

[para 21] In Order P2012-05<sup>10</sup> which was issued by this Office after the *Leon's* decision, the adjudicator provided the following interpretation of the *Leon's* decision at paragraph 38:

[para 38] The Court in *Leon's* commented that PIPA is not *primarily* aimed at opinions, choices or status and that *one of* the purposes of the Act is to protect against ‘identity theft’. In my view, these statements do not necessarily lead to the conclusion that the broad definition of personal information in PIPA specifically excludes information about an individual's choices, opinions or status, even if these elements are not, arguably, the primary focus of the Act. Further, the Court of Appeal more recently observed about the definition of personal information in PIPA, that “[i]t covers all personal information of any kind, and provides no functional definition of that term” (*United Food and Commercial Workers, Local 401 v. Alberta (Attorney General)*, 2012 ABCA 130, at para. 73).

[para 22] The *Leon's* decision, and what constitutes “personal information” was given further consideration by the Alberta Court of Appeal in *Edmonton (City) v. Alberta (Information and Privacy Commissioner)*, 2016 ABCA 110 (*Edmonton (City)*).

[para 23] While the *Edmonton (City)* decision involved the interpretation of the term “personal information” under the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 (the FOIP Act) and not PIPA, the Court made the following determinations that are relevant to the issues in this inquiry:

### “Personal Information”

[22] At the centre of this appeal is whether the Commissioner's interpretation of the term “personal information” is reasonable. As noted, this is a defined term in the *FOIPP Act*.

[23] It can be acknowledged that the decision in *Leon's Furniture* is not “binding”, because it was decided under a different statute. That being said, one would anticipate some symmetry between the definitions in the *FOIPP Act* and the *Personal Information Protection Act*, since they both relate to the same general subject. As explained in Pierre-André Côté, *The Interpretation of Legislation in Canada*, 4th ed. (Toronto: Carswell, 2011) at p. 365:

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<sup>10</sup> This Order was upheld on judicial review by the Alberta Court of Queen's Bench in *Peter Choate & Associates Ltd. v. Dahlseide*, 2014 ABQB 117.

Different enactments of the same legislature are deemed to be as consistent as the provisions of a single enactment. All the legislation of a legislature is deemed to make up a coherent system. Thus, interpretations favouring harmony between statutes should prevail over those favouring conflict, because the former are presumed to better represent the thought of the legislature.

This presumption of coherence in enactments of the same legislature is even stronger when they relate to the same subject matter, *in pari materia*. When conflicts between statutes do arise, however, they should be resolved in such a way as to re-establish the desired harmony.

This principle was applied in *Hayes v Mayhood*, [1959] SCR 568; *Bell ExpressVu Limited Partnership v Rex*, 2002 SCC 42 at para. 27, [2002] 2 SCR 559; and *Canada 3000 Inc., Re; Inter-Canadian (1991) Inc. (Trustee of)*, 2006 SCC 24 at para. 54, [2006] 1 SCR 865.

[24] In addition to both statutes relating to the same subject of “privacy”, both the definitions in the *FOIPP Act* and the *Personal Information Protection Act* contain the same root: “information about an identifiable individual”. The *FOIPP Act* goes on to say that, while “personal information” means “information about an identifiable individual”, it specifically “includes” some described categories of information. Describing a term as “meaning” something general, but then “including” some specific items is a well-known device used in statutory drafting. The core meaning is intended to be general. The specific items that are “included” are there to remove doubt about whether those items are covered by the general definition, and they can also provide some insight into what the Legislature intended by the general definition: *Dagg v Canada (Minister of Finance)*, [1997] 2 SCR 403 at para. 68.

[25] In general terms, there is some universality to the conclusion in *Leon’s Furniture* that personal information has to be essentially “about a person”, and not “about an object”, even though most objects or properties have some relationship with persons. As the adjudicator recognized, this concept underlies the definitions in both the *FOIPP Act* and the *Personal Information Protection Act*. It was, however, reasonable for the adjudicator to observe that the line between the two is imprecise. Where the information related to property, but also had a “personal dimension”, it might sometimes properly be characterized as “personal information”. In this case, the essence of the request was for complaints and opinions expressed about Ms. McCloskey. The adjudicator’s conclusion (at paras. 49-51) that this type of request was “personal”, relating directly as it did to the conduct of the citizen, was one that was available on the facts and the law.

[para 24] In Order P2006-004, former Commissioner Work drew a distinction between information that was “about” and individual and information that was “related” to an individual.

[para 25] In that Order, former Commissioner Work found that information that merely relates to an individual, but is not “about” an individual, is not personal information. At paragraph 12, he stated:

[para 12] 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. In this case, only part of the information that the A/C asked for was information “about” him. Had he relied on PIPA to obtain the information, he would not have received much of the information that was made available to him under the *Legal Profession Act* and the Rules created thereunder, or pursuant to the requirements of fairness.

[para 26] This interpretation has been followed by this Office in numerous subsequent Orders.<sup>11</sup> While these Orders dealt with access requests for information under the Act, the comments regarding what constitutes personal information under the Act are equally applicable in the context of complaints regarding the collection, use, or disclosure of personal information under the Act.

[para 27] In my view, taking into account the previous Orders of this Office and the comments of the Court of Appeal in *Leon’s* and *Edmonton (City)*, the question to be determined in this case in order to decide whether the information is personal information under the Act, is whether the information has a personal dimension to it such that it is *about* the Complainant, and not simply related to or associated with her.

[para 28] The Complainant complained that the Organization was informed by her insurance company that the Complainant had settled her insurance claim, and the amount of the settlement, and that this was a collection by the Organization of her personal information in contravention of the Act. The Complainant described this as a collection of her “confidential information”.

[para 29] Confidential information may or may not be, or include, “personal information”. I am not making any finding about whether the information was confidential information, only whether the information was personal information.

[para 30] In Decision P2011-D-003, former Commissioner Work further considered what would constitute personal information about an individual. That matter involved an access request made to a law firm for the applicants’ personal information contained in a client file by the firm in the course of representing a party who was opposed in interest to the applicants. At paragraph 30, former Commissioner Work stated:

[para 30] In my view, there is likely to be a close parallel between the type of information that is in the “client file” held by the law firm, and the type of information described in the paragraphs just quoted. The fact the file contains information related to one of the Applicants because he was the opposing party in the legal matters does not of itself make the information “about him”. What is “about him” is information such as what he has said or expressed as an opinion, the fact he has done certain things or taken certain steps, details of his personal history, and personal details about him such as his name and other associated information such as where he lives or his telephone number. This is not meant to be an exhaustive list, but is provided to illustrate the type of information that is personal information, in contrast to information other than this type of information, that was generated or gathered by the law firm or its client for the purpose of pursuing the litigation. The point is that much or most of the latter may well not be the first Applicant’s personal information

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<sup>11</sup> See for example, Orders P2015-05 at paras. 23 and 24, P2015-03 at paras. 15 and 16, P2014-01 at para. 3, and P2009-001 at para. 12.

even though it relates to a legal matter that involved him. An obvious example would be legal opinions given to the law firm's client as to how to deal with the litigation with the Applicant or associated legal matters. The way in which the law firm was advising its client and dealing with the legal matters may have affected the Applicants, but it was not "about" them in the sense meant by the definition of personal information in the Act. (This information would also be privileged, but the point here is that much or most of it would likely not be the Applicant's personal information within the definition of the term contained in the Act.)

[para 31] While former Commissioner Work's comments in Decision P2011-D-003 were made in the context of an access request under the Act, his conclusion that "[w]hat is "about him" is information such as . . . the fact he has done certain things or taken certain steps . . .", also applies in the context of a complaint regarding the collection, use, or disclosure of personal information under the Act.

[para 32] Decision P2011-D-003 was considered in Order P2015-05. At paragraph 28 the Director of Adjudication stated:

[para 28] Some of these records recount events in which the Applicant was involved and the nature of his involvement – where he was, what he did and said, and so on. On this account, they can be said to contain information about the Applicant which is his personal information.

[para 33] I also find the decision of the Assistant Commissioner of the Information and Privacy Commissioner of Ontario in Order MO-2040<sup>12</sup> of some assistance in determining the issue at hand. While the decisions of information and privacy commissioners in other jurisdictions are not binding on this Office, they can be helpful.

[para 34] In Order MO-2040, the City of Toronto (the City) received an access request under the Ontario *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56 (the Ontario Act) for a copy of a settlement agreement between the City and a named individual. The request was also for the amount the City paid to the named individual to settle the claim that was the subject of the agreement.

[para 35] The Assistant Commissioner considered whether the amount paid by the City to the affected person was "personal information" as defined in section 2(1) of the Ontario Act, and reached the following conclusion:<sup>13</sup>

I find that the record in this case contains the personal information of the affected person. It clearly includes the name of the individual, along with details of the amount of the payment to him pursuant to the full and final release, and other terms and conditions of the release. I am satisfied that this information qualifies as his personal information under paragraphs (b) and (h) of the definition in section 2(1) of the *Act*.

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<sup>12</sup> Order MO-2040, 2006 CanLII 50693 (ON IPC).

<sup>13</sup> *Ibid.*, at page 7.

[para 36] The definition of “personal information” under section 2(1)(b) of the Ontario Act includes “information relating to financial transactions in which the individual has been involved”.

[para 37] Given that the definition of “personal information” under PIPA is “information about an identifiable individual”, I do not see why this would not include information relating to financial transactions in which the individual has been involved, where the individual is identifiable.

[para 38] I find support for this analysis in Order P2021-01, where the adjudicator determined at paragraph 13 that “[i]nformation about an individual’s finances and investments is their personal information”.

[para 39] Finally, I note that in Order P2010-017 at paragraph 12, the adjudicator made the following finding:

[para 12] The forwarded letter contained information about the Applicant’s employment history and a recent settlement agreement reached between the Organization and the Applicant. I find that the letter does contain the Applicant’s personal information.

[para 40] Taking all of this into account, in my view, the fact that the Complainant settled her insurance claim with her insurance company and the amount that she settled for, discloses something personal about the Complainant. It discloses the decision she made about how to proceed with her claim (i.e., whether to settle the claim or continue with litigation) and the amount she was prepared to accept to settle her claim. The information indicates that she had done a certain thing or taken a certain step.

[para 41] The conversation the Organization had with the insurance company in which this information was brought to the attention of the Organization, was about the Complainant and her insurance claim. She was an identifiable individual.

[para 42] For these reasons, I find that the fact that the Complainant settled her insurance claim with her insurance company and the amount she settled for is personal information about the Complainant under section 1(1)(k) of the Act.

[para 43] As I have concluded the Act applies to the information, it is necessary to determine whether the Organization collected the information in compliance with section 7 of the Act.

2. **If the answer to the first Issue is “yes”, did the Organization collect the information contrary to, or in compliance with, section 7(1)(a) and (b) of PIPA (Consent required)? In particular,**
  - a. **Did the Organization have the consent to collect the Complainant’s personal information under section 8 of PIPA (Form of Consent)?**
  - b. **If the Organization did not have the Complainant’s consent to collect the Complainant’s personal information, did the Organization have the**

**authority to collect the information without consent, as permitted by section 14 of PIPA (Collection without consent)?**

[para 44] Sections 7(1)(a) and (b) of the Act state:

*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,*

[para 45] Before addressing the question of whether it had collected the Complainant’s personal information in compliance with sections 7(1)(a) and (b), the Organization argued that, given that it did not solicit the information, it did not “collect” the information under the Act, and therefore, section 7(1)(a) of the Act did not apply and there was no breach of the Act.<sup>14</sup>

*Collection*

[para 46] The Organization submitted:<sup>15</sup>

The term “collect” is not defined in PIPA and we have not located case authority on point with respect to the definition of the term “collect” as used in section 7 of the Act. However, the Miriam-Webster Dictionary (often referred to by Alberta courts) defines “collect” as *inter alia* “to gather or exact from a number of persons or sources.”

**B. Argument**

Based on the foregoing, it is respectfully submitted that s. 7(1)(a) does not apply to this situation as the Settlement Information was not collected from the Complainant.

In the alternative, even if section 7(1)(a) applies, it is submitted that the Respondent did not *collect* the Settlement Information from [name of insurance company] pursuant to section 7(1)(b) of PIPA.

As set out at paragraphs 7, 8 and 9 of the Affidavit of [name of Owner], the Respondent was not aware of the Settlement Information (nor did he or [name of employee] request it) until it was received by [name of employee] unsolicited from [name of insurance company]. As such, it is submitted that there was no ‘collection’ of “personal information” as contemplated by section 7 of PIPA.

In this regard, it is submitted that the term “collect” must include some kind of *intentional* action by the Respondent to obtain “personal information” – either from an individual or from a source other than the individual. If such a requirement were not included in the

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<sup>14</sup> Organization’s initial submission dated December 8, 2020 at page 4.

<sup>15</sup> *Ibid.*

definition of “collect”, an innocent recipient would automatically find themselves offside section 7 of PIPA in the event that an individual’s personal information was provided to them which they had not sought or requested. This could not have been the intention of the Legislature when drafting section 7 of PIPA, nor is it in keeping with the overall purpose and interpretation of PIPA as set out in section 3 of the Act.

As such, it is respectfully submitted that there has been no ‘collection’ of personal information by the Respondent as it received the unsolicited Settlement Information by [name of insurance company] (the latter of which, it is submitted, was simply trying to assist with the Complainant’s resolution of this matter).

[para 47] The question of whether an organization can be said to have collected personal information when it receives unsolicited information was considered in Order P2006-001.

[para 48] In Order P2006-001, an organization had received two unsolicited letters about the complainant. The complainant complained that the organization had collected the unsolicited letters without notification to her, or her consent, in contravention of the Act. At paragraphs 37 - 39, former Commissioner Work stated (my emphasis):

[para 37] The Organization argued that the Act does not define “collection”. The Organization submitted that the Concise Oxford Dictionary, Ninth Edition defines collection to mean: “1. to bring or come together, assemble, accumulate. 2. systematically seek and acquire . . .” The definition, according to the Organization, requires steps to request, call in and seek in order to collect and that they did not collect the opinions about the Applicant. In addition, given the unsolicited nature of the opinions, it was impossible for the Organization to have provided the Applicant with any advance notice that they were to be received or for what purpose they were being received. The Organization again argued that for advance notification to be required for that which it had no idea is about to be provided is a challenge to one’s common sense. The Organization argued that it would seem more appropriate to interpret “collection” not to include unsolicited information.

[para 38] The Organization contended that the unsolicited “acquisition” of employment-related personal employee information, submitted in confidence, regarding an employee and potential employee was not a collection of personal information. The Organization argued that it did not collect the information because it was unsolicited.

[para 39] All of the information at issue concerns the employee performance directly related to the Applicant’s application for a position with the Organization. The Act does not define collection, but if I turn to section 33 of the *Freedom of Information and Protection of Privacy Act* I find that according to Order 98-002, collection need not be a positive act and that it does not matter how the information is collected as any manner of collection, including receiving unsolicited information, is a collection.

[para 49] “Collection” under the Act was also considered by the adjudicator in Order P2008-007. At paragraphs 20 – 23, the adjudicator made the following findings:<sup>16</sup>

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<sup>16</sup> See also Order P2007-011 at paras. 44 and 50.

[para 20] PIPA does not define the term “collect”. However, it is defined in section 1(1)(d) of the *Health Information Act* as “to gather, acquire, receive or obtain”, and this definition has been adopted for the purposes of PIPA (Order P2007-011 at paras. 44 and 50).

[para 21] It is the submission of the Organization that, when an organization keeps a sealed envelope with unknown contents in safe-keeping for one of its members, it cannot be said that the organization is collecting personal information. The Organization argues that the collection of personal information requires a positive and mindful action, and that an organization must be aware that it is in fact collecting information about an individual.

[para 22] I find that the Organization collected the Teacher’s personal information, as it acquired, received and obtained the letter containing her personal information. It does not matter that the letter was in a sealed envelope that the Organization did not open, or whether or not the Organization was aware of its contents. Collection of personal information is a matter of fact, regardless of the extent to which an organization was aware of what it was doing. In the comparable context of the FOIP Act, it has been stated that it does not matter how a public body comes to have personal information; any manner of getting personal information is a collection for the purposes of the Act; and it is not necessary for a public body to actively collect personal information for there to be a collection (Order 98-002 at para. 177).

[para 23] Moreover, in the context of PIPA, the Commissioner found in another inquiry that it was not necessary for an organization to actually view images captured on a video camera in order for the organization to collect the personal information contained in those images (Order P2006-008 at paras. 34 and 37). To state that personal information is collected only when images are viewed fails to consider the terms “used” and “disclosed” found elsewhere in the Act (Order P2006-008 at para. 36). I extend this reasoning to the present inquiry in that it was not necessary for the Organization to actually open the sealed envelope, or read the Teacher’s personal information, in order for the Organization to have collected the personal information contained in the letter. Had the Organization opened the sealed envelope, that act might have been relevant to finding whether there was a use, but it was not necessary for the envelope to be opened in order for there to have been a collection.

[para 50] Orders P2006-001 and P2008-007, and the Orders upon which they rely, say that receiving personal information, whether it was solicited or not, is a collection under the Act.

[para 51] I note, however, that recently, in Order P2021-09, the adjudicator adopted a different interpretation of “collection” under the Act with respect to unsolicited information. At paragraph 44, the adjudicator stated:

[para 44] With respect to the collection of personal information in the text, Complainant #2 sent the text to the Organization (specifically, to F). The Organization did not solicit that text. As such, the Organization cannot be said to have collected the text merely by having received it. However, the Organization clearly maintained the text and decided to use and disclose it. As such, it must be said to have collected the information.

[para 52] I find that I do not have to determine which view is the better one here since, for the reasons set forth below, the result is the same, in that I find the Organization collected the Complainant’s personal information.

[para 53] The definition of “personal information” under the Act is “information about an identifiable individual”. There is no qualification or restriction that says that the Act only applies to personal information that is in writing. As a result, when an organization receives personal information about an identifiable individual verbally, the Act applies to the information.<sup>17</sup>

[para 54] In the case at hand, the Organization’s evidence is that following the meeting with the Complainant and her husband on December 9, 2016, the Organization’s employee spoke with the Complainant’s insurance company and was informed that the Complainant had settled her insurance claim with the insurance company and the amount of the settlement. The evidence before me is that the employee shared the information with the Owner and the next day, the Owner sent an email to the Complainant and her husband. The email was provided in this inquiry by the Complainant and also by the Organization, as an Exhibit to the Owner’s Affidavit. In the email, the Owner states:<sup>18</sup>

We understand that you were subsequently successful in reaching a negotiated settlement directly with [name of insurance company] for \$[amount] which is nice to hear as you had not mentioned this to us.

[para 55] The Organization verbally received the Complainant’s personal information. Following the decisions of this Office in Orders P2006-001 and P2008-007, this is sufficient for me to find that the Organization collected the Complainant’s personal information. Given that the Organization’s employee shared the information with the Owner, and that the Owner included it in his email to the Complainant, I find that the Organization also collected the Complainant’s personal information according to the test for collection set out by the adjudicator in Order P2021-09. In conclusion, I find that the Organization collected the Complainant’s personal information under the Act.

### *Consent*

[para 56] As noted above, section 7(1) of the Act states that except where the 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,*

...

[para 57] Section 8 of the Act states:

*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.*

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<sup>17</sup> There are numerous Orders of this Office that have considered whether organizations have verbally collected, and/or used, and/or disclosed personal information in compliance with the Act.

<sup>18</sup> Exhibit “A” - Email dated December 10, 2016, attached to the Affidavit of the Owner sworn December 8, 2020.

*(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.*

*(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.*

*(2.2) An individual is deemed to consent to the collection, use or disclosure of personal information about the individual by an organization for the purpose of the individual's enrolment in or coverage under an insurance policy, pension plan or benefit plan or a policy, plan or contract that provides for a similar type or coverage or benefit if the individual*

- (a) has an interest in or derives a benefit from that policy, plan or contract, and*
- (b) is not the applicant for the policy, plan or contract.*

*(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 purposes for which the information was collected.*

*(5) Consent in writing may be given or otherwise transmitted by electronic means to an organization if the organization receiving that transmittal produces or is able at any time to produce a printed copy or image or a reproduction of the consent in paper form.*

[para 58] The Organization submitted that in the event that I were to determine there had been a collection of the information by the Organization, the Complainant had consented to this when she asked the Organization to act on her behalf and contact her insurance company to try to resolve her claim.

[para 59] The Organization stated (emphasis in submission):<sup>19</sup>

In the event that the Adjudicator finds that the Respondent collected “personal information” from [name of insurance company] in respect of the Complainant, it is submitted that the Respondent had the consent of the Complainant to do so. To that end, it is submitted that in requesting that the Respondent contact [name of insurance company] on her behalf in order to assist with the denial of her claim (a fact the Complainant has not disputed), the Complainant consented to the sharing of the information in respect of the Complainant’s claim as between the Respondent and [name of insurance company]. As such, it is submitted that ss. 7(1)(b) and 8(1) of PIPA have been satisfied.

In addition, the Respondent notes that s. 8(2.1) of PIPA has also been satisfied in this case, which section provides:

8(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.

As such, it is submitted that, not only did the Complainant consent to the Respondent sharing personal information with [name of insurance company] with respect to her disputed claim, she also consented to [name of insurance company] disclosing personal information with respect to the disputed claim with the Respondent.

The Respondent further notes that, after providing consent to the Respondent to contact [name of insurance company] on her behalf, the Complainant never withdrew such consent (either implicitly or explicitly) pursuant to s. 9 of PIPA. As such, it is respectfully submitted that there was nothing improper about [name of Organization’s employee]’s contact with [name of insurance company] following the December Meeting, which was yet another effort by the Respondent to assist the Complainant in her dispute with [name of insurance company].

Further, by failing to reveal to the Respondent during the course of the December Meeting that [name of insurance company] had in fact been sued by (and ultimately settled with) the Complainant, the Respondent was not aware of the critical fact that the dispute with [name of insurance company] had ultimately been resolved. With respect, this left the Respondent with a misleading understanding as to the status of the dispute with [name of insurance company] at the conclusion of the December Meeting. To that end, had the Complainant disclosed that the matter with [name of insurance company] had been resolved, there would

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<sup>19</sup> Organization’s supplemental submission dated January 13, 2021 at page 2.

have been no reason for the Respondent to contact them again to petition on the Complainant's behalf.

[para 60] In the Complainant's rebuttal submission, in response to paragraph 7 in the Owner's Affidavit, the Complainant submitted that the reason she did not disclose that she had advanced a civil action against her insurance company in respect of its denial of coverage, or that she was ultimately successful in settling the matter with the insurance company for the settlement amount, was because she had signed a confidential mediation agreement. She stated "[t]he interpretation provided respecting said confidential mediation agreement, was an understanding that the parties agreed not to disclose information about the confidential mediation to anyone who was not in attendance".<sup>20</sup>

[para 61] With respect to the Organization's statements in paragraph 12 of the Owner's Affidavit, the Complainant stated (my emphasis):<sup>21</sup>

Respecting Paragraph number 12: It is the considered opinion of the Complainant, that the issue of compensation is not part of the alleged privacy breach. However, since this is mentioned in the Affidavit of the respondent, it was the expectation of the Complainant that the Respondent work for/with the Complainant regarding the Complainant's insurance claim. The fact that the Complainant was, through their own time and effort able to achieve the result they did, is, in the opinion of the Complainant, indicative of the inability (failure?) of the Respondent to dedicate the time and effort required to achieve the same result on their behalf. Hence, the compensation request by the Complainant, which was denied by the Respondent. It is the understanding of the Complainant that most Brokerages carry "Errors and Omissions" coverage in the event that they encounter situations such as in this case.

[para 62] The Complainant further stated (my emphasis):<sup>22</sup>

- it was following the settlement between the Complainant and [name of insurance company] that the Complainant met with Rogers Insurance (the broker/Respondent) to present their case for compensation for work the Complainant had performed due to errors and omissions by the Respondent and the Respondent's failure to achieve a settlement with [name of insurance company] on behalf of the Complainant.

[para 63] In its rebuttal submission, the Organization stated:<sup>23</sup>

...

2. As an insurance broker, it was not the Respondent's responsibility to advance the [last name of Complainant and her husband]' claim with [name of insurance company]; this was done as a courtesy and with the consent of the Complainant.
3. While the compensation the [last name of Complainant and her husband] were seeking from the Respondent at the December Meeting is immaterial to the issues before the

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<sup>20</sup> Complainant's rebuttal submission dated January 25, 2021.

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*

<sup>23</sup> Organization's rebuttal submission dated February 8, 2021.

OIPC, the Respondent notes that the Complainant acknowledges in her Rebuttal response that she expected the Respondent to “work for/with the Complainant regarding the Complainant’s insurance claim” and that she expected the Respondent to obtain results [with [name of insurance company]] “on their behalf.”

It is submitted that these statements clearly indicate that the [last name of Complainant and her husband] had consented to the Respondent contacting [name of insurance company] in respect of their claim. This consent was never revoked, nor would it have been reasonable for the Respondent to expect that it had been.

4. Further, it is notable that, at no time has the Complainant ever disputed that the Respondent had her consent to contact [name of insurance company] with respect to her claim. Rather, her objection is solely with [name of insurance company]’ unsolicited disclosure of the Settlement Information to the Respondent.

[para 64] I find the Organization’s version of events and its position to be supported by the email dated December 10, 2016 sent by the Owner to the Complainant following their December 9, 2016 meeting. Both parties provided me with a copy of this email. In it, the Owner states in part (my emphasis):<sup>24</sup>

This will confirm your visit to our office yesterday to discuss your concerns around your allegation that we failed to follow up on your claim denial by [name of insurance company] in their communication of August 5<sup>th</sup> 2015. We did in fact follow up a second time with [name of insurance company] to express on your behalf your disagreement and dissatisfaction with the claim denial. In fact we as you know we [sic] had to have [name of insurance company] open up an additional [or second] claim as this was the only way [name of insurance company] would look at your case again. They then assigned [name of employee] as your adjuster and [they] subsequently advised you that they were still denying the claim for the same reasons as before.

...

Your contract of insurance is with [name of insurance company] and any concerns or appeals re coverage necessarily have to be made against them not us. As your broker at the time I feel that we acted properly and professionally and indeed we tried hard to get [name of insurance company] to reconsider their decision and consider paying your claim.

...

We understand that you were subsequently successful in reaching a negotiated settlement directly with [name of insurance company] for \$[amount] which is nice to hear as you had not mentioned this to us.

I have to say that we cannot accept your allegations that we failed to act properly on your behalf. Your request yesterday for additional funds directly from [sic] simply to “pay you for your troubles” is something we are neither legally liable for or willing to pay. We acted professionally and properly throughout the process of your claim.

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<sup>24</sup> Exhibit “A” - Email dated December 10, 2016, attached to the Affidavit of the Owner sworn December 8, 2020.

...

[para 65] I find that the Complainant's statements in her Request for Inquiry and in her rebuttal submission establish that she had authorized, and expected, the Organization to act on her behalf in trying to resolve her claim with her insurance company.

[para 66] The Organization could not have acted on the Complainant's behalf to try to resolve her claim with her insurance company, in accordance with the Complainant's stated expectations, had she not also consented to the Organization speaking to her insurance company and collecting information regarding her claim, from her insurance company.

[para 67] Accordingly, I find that during her discussions with the Organization in which the Complainant authorized the Organization to act on her behalf in submitting her claim and contacting her insurance company to try and get her insurance company to reconsider its decision and consider paying her claim, she necessarily consented to the Organization discussing her claim with her insurance company and collecting her personal information from the insurance company with respect to her claim.

[para 68] I find the Complainant's verbal authorization for the Organization to act on her behalf in trying to resolve her insurance claim with her insurance company amounted to oral consent under section 8(1) of the Act for the Organization to collect her personal information as it related to her insurance claim, from her insurance company.

[para 69] I turn now to consider whether the Complainant revoked her consent prior to the Organization contacting her insurance company following the meeting of the parties on December 9, 2016.

[para 70] I understand from the evidence and submissions of the parties that at the December 9, 2016 meeting, the Complainant presented her case "for compensation for work the Complainant had performed due to errors and omissions by the Respondent and the Respondent's failure to achieve a settlement with [name of insurance company] on behalf of the Complainant".<sup>25</sup>

[para 71] I accept the Organization's submissions that as the Complainant did not inform the Organization that she had settled her claim with her insurance company, the Organization's understanding at the end of the December 9, 2016 meeting was that the Complainant's insurance claim had still been denied by her insurance company, and that the Complainant expected the Organization to compensate her for the Organization's failure to resolve her claim with her insurance company on her behalf, and for the time and stress to the Complainant in trying to resolve her claim.

[para 72] I find that there is no evidence before me to indicate that the Complainant revoked her authorization for the Organization to act on her behalf with respect to trying to resolve her claim with her insurance company, prior to the Organization's employee speaking with the insurance company following the meeting between the parties on December 9, 2016.

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<sup>25</sup> Complainant's rebuttal submission dated January 25, 2021.

[para 73] Likewise, there is no evidence before me to indicate that the Complainant revoked her consent for the Organization to collect personal information about her with respect to her insurance claim, from her insurance company, within the terms of section 9 of the Act, prior to the Organization's employee speaking with the insurance company following the meeting between the parties on December 9, 2016.

[para 74] I accept the Organization's submissions that following the meeting between the parties on December 9, 2016, based on the Complainant's authorization for the Organization to act on her behalf in trying to resolve her claim, the Organization contacted the Complainant's insurance company a third time to see if anything could be done to change its decision to deny the Complainant's claim. I accept that in the response to this enquiry the Organization made on behalf of the Complainant, the Complainant's insurance company informed the Organization that the Complainant had settled her claim and the amount of the settlement.

[para 75] Given the specific facts and evidence in this case, I find that the Complainant's consent under section 8(1) of the Act to the Organization's collecting personal information about her in regard to her insurance claim, from her insurance company, continued to be in effect at the time the information about her settlement was provided to the Organization by her insurance company. Therefore, the Organization was in compliance with sections 7(1)(a) and (b) of the Act when it collected the information that the Complainant had settled her claim with her insurance company and the settlement amount.

[para 76] As I have found that the Organization had the Complainant's consent to collect her personal information from her insurance company, it is not necessary for me to consider whether the Organization was permitted to collect her personal information without her consent under section 14 of the Act.

#### **IV. ORDER**

[para 77] I make this Order under section 52 of the Act.

[para 78] I find that the Organization collected the Complainant's personal information in compliance with the Act.

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Carmen Mann  
Adjudicator  
/kh