

**ALBERTA
INFORMATION AND PRIVACY COMMISSIONER**

Request for Authorization to Disregard an Access Request
Under section 37 of the
Personal Information Protection Act

Alberta Motor Association
(OIPC File Reference P1241)

March 8, 2010

INTRODUCTION

[1] On March 13, 2009, I received a request from the Alberta Motor Association (“AMA”) requesting authorization to disregard all access to information requests made by two individuals, a married couple, (the “Husband” and the “Wife”, or the “Respondents”). AMA requests authorization to disregard five access requests from the Respondents and it requests authorization to disregard all future requests from the Respondents until all pending litigation between AMA and the Respondents has been completed.

JURISDICTION

[2] Section 37 of the *Personal Information Protection Act* (“PIPA” or “the Act”) gives me a discretionary (“may”) power to authorize an organization to disregard certain requests under PIPA. Section 37 provides as follows:

- 37 If an organization asks, the Commissioner may authorize the organization to disregard one or more requests made under section 24 or 25 if
- (a) because of their repetitious or systematic nature, the requests would unreasonably interfere with the operations of the organization or amount to an abuse of the right to make those requests, or
 - (b) one or more of the requests are frivolous or vexatious.

[3] I have jurisdiction in this matter because AMA is an organization as defined by subsection 1(i) of the Act.

[4] In considering AMA’s submission under section 37, I am mindful of PIPA’s purpose and legislative principles and the relevant circumstances surrounding their submission. I do not take a decision to grant a section 37 request lightly. To be successful in this application, AMA must

establish that the request meets the requirements of PIPA subsection 37(a) or (b).

BACKGROUND of s. 37 REQUEST

AMA's Position

[5] AMA states that from May 2007 to January 2009, it received approximately 15 requests for access to information from the Respondents. AMA states it has provided the Respondents with access to all of the personal information to which they have a right of access under PIPA, and further, its response to the Husband's May 2007 access request was the subject of a Request for Review by the Office of the Information and Privacy Commissioner ("OIPC") and the Portfolio Officer found AMA's response had complied with PIPA. Having provided the Respondents with access to their personal information, AMA has continued to receive requests from them for access to the same information.

[6] In July 2007, AMA provided the Respondents with a copy of the personal information in their insurance file which they were entitled to access under PIPA. Many documents were withheld under various exceptions of s. 24 of PIPA, including those containing personal information that was collected for an investigation or legal proceeding and information that was protected by legal privilege. AMA's response to the Respondents was reviewed by the OIPC and found to be compliant with the Act. Since commencing litigation against AMA, the Respondents have made repeated requests for records that were already provided to them, records that were found to be properly withheld under the Act and records that contain no personal information of the Respondents, such as contracts between other parties unrelated to the Respondents. The Respondents have also made repeated requests that the AMA destroy records containing the Wife's personal information and cease communicating with other parties in relation to the insurance claims.

[7] AMA submits the Respondents were insured through AMA and in 2006 they submitted insurance claims for both a basement flood and a house fire. The Husband stated he sold all of his assets to the Wife and therefore his bankruptcy trustee had no interest in any insurance claim proceeds from AMA. AMA conducted a fraud investigation into the Respondents' insurance claims and ultimately, the Respondents commenced civil litigation against AMA for matters relating to these claims.

[8] AMA takes the position that the "[Respondents]" conduct is partially due to AMA having denied their insurance claim for their

flooded basement on the grounds they were making false claims”. As such, the Respondents continue to make requests for personal information they have already received as well as other information to which they are not entitled under the Act. AMA asks for authorization under s. 37 to disregard requests from both the Husband and the Wife.

[9] The AMA states the OIPC has already investigated “multiple complaints” against it from the Respondents regarding these matters and “[t]he OIPC investigated each of the complaints and each time found that AMA had not breached the privacy rights of the [Respondents] in any way”. AMA has asked me to provide authorization under s. 37 of PIPA to allow it to disregard further requests for information from the Respondents, pending the completion of civil litigation commenced by the Respondents against AMA. AMA states:

Rather than work through the litigation process, the [Respondents] are repeatedly attempting to obtain a copy of their entire insurance file through the access to information process, which includes information that is clearly protected by legal privilege. This is despite the fact that the OIPC has already reviewed the insurance file and has agreed that AMA is permitted to withhold some of the documents (Request for Review #P0862). [The Wife] has also demanded that AMA destroy all personal information it has on her, which is essentially a request to destroy evidence before a trial. We have obviously denied this request. The most recent correspondence from the [Respondents] is enclosed, which is the subject of our request under Section 37 of PIPA.

[10] AMA outlined six points in further detail in its request for authorization to disregard the requests from the Respondents. It stated:

- 1) Investigation #P0862 already dealt with the records to which the Husband was entitled to access under PIPA.
- 2) Despite this, the Respondents “have continued to make the same complaints and requests for the same information over and over again. So much to the point where the OIPC has even commented on this (Complaint #P0951) and the Commissioner himself has already refused to commence a further investigation”.
- 3) “The information the [Respondents are] seeking does not exist. They are hoping for the ‘miracle’ piece of evidence to turn up that will aid them in their litigation”.
- 4) The requests the Respondents are making are not for access to information, but rather admissions. AMA states that the role of its Privacy Office is to deal with personal information, not to be litigants.

- 5) The Respondents are using the ability to make a complaint to the OIPC as a means to burden AMA with more work in the hope that AMA will settle their claims.
- 6) Concerns that the Respondents have regarding disclosure in the litigation process do not concern personal information under PIPA, and would be better dealt with through the litigation process.

Respondents' Positions

[11] The Respondents were given an opportunity to provide comments regarding the AMA's request to receive authorization to disregard all requests under PIPA made by them pending the conclusion of the litigation they had commenced against AMA. Both the Husband and the Wife provided separate submissions.

[12] The Husband states he has "made no frivolous or vexatious requests" and he has "not attempted to make repetitious or systematic natured complaints". I have included portions of the Husband's comments below:

My access requests do not unreasonably interfere with a large corporations operations thay [sic] are a large company with many employees and simply letting me see my file would stop all the paperwork. Hiring lawyers to hinder my PIPA request is effective but unnessisary [sic]. What I have learned is I am a poor lawyer [sic] and AMA has been very good at hindering my access to info. [...]

The Husband also included a summary of the litany of complaints against AMA and other organizations which he has alleged over the past several years. He continued:

[...] Now let me be frank once you recieve [sic] some of above information it makes you ask another reasonable question. Further if you are not given any answers and get the run around by there [sic] lawyers [sic] it make me more determind [sic] and in fact I learn from mistakes and will ask questions better.

What is the objective I am not interested in spending all my time in court doing legal litigation. My request was simple please let me see my entire file! The AMA refused to give me a picture of my home a fire report in fact would give nothing.

The Privacy Commision [sic] should be interested in giving people access to info quickly it's 2 year later I have been patient.

Shurly [sic] I want AMA to respect every Albertan's privacy in future making them give my private info will help people in the future.

Litigation should have no bearing on my PIPA rights and having a [sic] unlimited legal budget should not prevent me from asking reasonable questions.

Simply dealing fairly with customers and showing them there [sic] file is the easiest way to prevent privacy complaints and eliminate all costs.

why is AMA afraid to give me [name's] voice recordings maybe [sic] it will prove my case?

why will AMA not produce original Disclosure form maybe [sic] they [sic] have been forged?

[13] I have included portions of the Wife's comments below:

My PIPA request should go forward I believe I have only made one request this should not be a burden [sic] for large corporation. There have NOT been a large amount of requests.

Further I have never made a frivolous or vexatious request.

I do want my PIPA rights and you should not allow AMA to use lawyers [sic] and litigation to avoid answering a simple request. I do not want litigation obviously do not have capacity to fight large corporation.

[...]

I also want to tell you what I have Discovered to date.

[...]

The Wife then included a detailed summary of issues she had regarding a particular disclosure of her personal information and asked:

Was this right or wrong I believe it is a violation of my PIPA rights?

I want my personal information returned from AMA and any third parties [sic] given it I want all electronic info returned & destroyed. I want to know who they [sic] gave my info to and why further what legal reasonable ground used to give [organization] notice I filed a proof of loss.

I want ability to file a reasonable PIPA complaint!!!
I want [date] tape recordings in [name] office!!!

The AMA has deliberately [sic] violated my privacy for there [sic] economic Benefit [sic] and rely on fine print in insurance contract [sic] that I never signed says simply only a policy holder can sue a ins [sic] company not his wife kids etc. Do not allow them to continue violating privacy it's Been [sic] over 2 yrs since fire and they [sic] refuse to give basic answers.

Chronology of AMA's Responses to the Respondents

[14] After providing the Respondents with access to their personal information in the insurance file in 2007, AMA continued to receive numerous communications from the Respondents. Generally, the Respondents requested access to the personal information they had already received, they requested access to the personal information from their insurance file that had been withheld under s. 24 of the Act, they requested information that was not personal information under the Act and they made numerous allegations of improper conduct on the part of AMA – most of which were addressed in Investigation Report P2008-IR-001.

[15] AMA states both the Husband and the Wife have been provided with copies of all of the personal information in their insurance file to which they are entitled to access under PIPA. Some of their personal information was withheld under various exceptions of s. 24 of the Act and the Respondents have continued to request the information that was withheld. In support of its s. 37 request, AMA provided a brief history of its dealings with the Respondents regarding access requests made after the publication of Investigation Report P2008-IR-001. I have included some of the information provided by AMA below:

March 2008

- AMA responded to two requests from the Husband for taped conversations and various complaints. AMA informed the Husband the tape recordings did not exist and the other matters referred to were not requests for personal information.

April 2008

- The Wife requested copies of consent forms and requested that AMA destroy all of the personal information it had about her. AMA responded by providing copies of the consent forms and informing the Wife that her personal information would not be destroyed as it was required for the legal proceedings commenced by the Respondents.
- AMA responded to another communication from the Wife requesting responses to questions. AMA responded that the matter was currently in litigation and the Wife could not use PIPA to obtain admissions for litigation.

August 2008

- AMA received a fax from the Wife requesting that AMA cease communications with the judgment creditor. AMA responded that Investigation Report P2008-IR-001 stated AMA could speak with the judgment creditor.

September, 2008

- AMA received a request from the Wife for a copy of the insurance claim file regarding the flood and the house fire. AMA responded that the Husband had already made an identical request which had been reviewed by the OIPC and that she had already received access to all of her personal information to which she was entitled under PIPA.

December, 2008

- AMA received various communications from the Husband requesting his “entire file” and alleging improper conduct by AMA, stating he had already received access to his personal information and that AMA would not be responding to the allegations made by the Husband.

January, 2009

- The Husband again requested his “entire file” and AMA informed him it would be making a section 37 application under PIPA.

Respondents’ Previous Complaints and Requests for Review to the OIPC Against AMA

[16] AMA also relies on the previous complaints and requests for review made by the Respondents as part of the evidence to be considered in this matter. Because it is relevant to my analysis of whether the AMA’s s. 37 request should be granted, I have included a brief summary of the issues the Respondents have brought before my Office against the AMA.

[17] The underlying issue in all of the communications from the Respondents to the AMA is the AMA’s response to the flood and fire insurance claims. Because all of their communications relate to this issue, there is no clear distinction in the Respondents’ communications between access requests, allegations of contraventions of the Act, and requests for information that is not subject to the Act. As such, although s. 37 of PIPA addresses only access requests, not complaints, I have decided to also include a discussion of the complaints the OIPC has received from the Respondents about AMA due to the lack of distinction in the Respondents’ communications between access requests and

complaints. Further, a discussion of all of the complaints and requests for review brought by the Respondents against AMA before my Office is relevant to my analysis under s. 37 of whether the Respondents requests are an abuse of the process under s. 37(a) and vexatious under s. 37(b). I also note the Respondents have made numerous additional complaints to this Office about AMA regarding its response to the Respondents' flood and fire insurance claims where for various reasons (including lack of jurisdiction to investigate a complaint and the issues have already been investigated) files have not been opened. Again, I mention this point because it is relevant to my analysis under s. 37. The following files relate to issues brought by the Respondents against the AMA:

P0763 (published Investigation Report P2008-IR-001) (Complaint)

This Investigation Report described much of the background situation between the Respondents and AMA. It investigated allegations by the Husband that AMA had collected, used and disclosed his personal information in contravention of PIPA when he submitted his insurance claims for the fire and the flood. The Portfolio Officer in this matter concluded that AMA had obtained consent to collect, use and disclose personal information to settle an insurance claim, but consent was not required in any case for the purposes of the fraud investigation AMA was conducting regarding the Respondents. The Portfolio Officer further found that some of the information was "publicly available personal information" as defined in the PIPA Regulation.

P0862 (Request for Review)

This was a request for review of the AMA's response to a request by the Husband in May, 2007 for access to his "entire file" relating to the two insurance claims made to AMA in 2006. The Portfolio Officer in this matter found that much of the information requested was not "personal information" as defined by PIPA. The Portfolio Officer found the Husband had been provided access to his personal information in accordance with the Act, and that other personal information had been properly withheld as it was protected by legal privilege or had been collected for the purposes of an investigation.

P0951 (Complaint)

This was an investigation into a series of letters in March and April of 2008 from the Husband alleging complaints against the AMA. Many of the complaints had already been dealt with by the OIPC in previous investigations or were not governed by PIPA. In May, 2008, the Husband copied the OIPC on another letter addressed to the Privacy Commissioner of Canada containing similar allegations. Similar to the findings in P2008-IR-001, the Portfolio Officer found AMA had obtained consent to collect, use and disclose the Husband's personal information, but that

consent had not been required for matters that were part of the fraud investigation or were publicly available information.

P1004

Based upon the findings in P2008-IR-001, I declined to investigate further allegations regarding AMA's disclosure of personal information to the civil judgment creditor's legal counsel.

P1048

After I refused to investigate the allegations made by the Husband in P1004, the Wife submitted a complaint with the same allegations. I declined to investigate this matter, for the same reasons given to the Husband in P1004.

Respondents' Requests to AMA

[18] In its submission to disregard requests from the Respondents, the AMA included a number of the most recent requests and communications (received between December 2008 and January 2009) from the Respondents. AMA has not responded to these requests and requests my authorization to disregard these requests as well as any further requests it receives until the litigation with the Respondents concludes. Upon review, it is apparent these communications all relate to the disputed insurance claims and are a combination of requests for access to personal information (which has already been provided), requests for personal information that has been previously withheld under the Act, requests for information that is not subject to the Act, requests for admissions relevant to the ongoing litigation and other matters unrelated to PIPA.

[19] The Respondents' recent requests include:

1. A December 12, 2008 request from the Wife for information regarding:

what personal information AMA has about me? What it's being used for. who it has been disclosed to without my consent. If you are conducting a [sic] investigation about me? I want a copy of everything further I want personal information returned and deleted from electronic records immediatly [sic].

2. The next day, on December 13, 2008, the Husband sent a request for a copy of a contract between the AMA and a bank regarding house insurance as well as a copy of any contracts between AMA and an individual and another organization. He stated:

Subject Request for Private Info

[Privacy Officer] apparently AMA has a contract with [Bank] regarding house insurance I would like a copy of this.

I would also like a copy of any contracts agreements made in connection with [Name of Individual] and [Organization]

Thanks
[Husband]

Note you have never given me a copy of above

In the event of fees take it off the money you owe me should they be excessive I will make a complaint about fees.

3. An undated 5 page request from the Husband with the subject line "Dec 28/06 Fire Claim". This letter included requests for copies of records relating to a November 2006 flood claim with AMA and a December 2006 fire claim. The Husband requested copies of documents as well as viewing of original records and included other requests such as:

I would like to know when a [sic] investigation was started without my permission all details of this who got & gave info to [sic]. when investigation stopped or if ongoing.

I want to know what reasonable ground to start a [sic] investigation without my consent.

[...]

You have never had my consent to disclose my private info to anybody

Why did you continue to investigate and disclose information after I withdrew [sic] consent?

*collecting information without consent

Need reasonable for purpose [sic] of an investigation example you can do this if you have reasonable grounds to suspect fraudulent activity. Note other personal information requires consent and a standard insurance claim is not a investigation under PIPA P2008-IR-001

*What fraudulent activity did you suspect and when did investigation start & stop

You are required to

- 1) give access to my personal information
- 2) Tell me what my info used for
- 3) Tell me to whom and what situations the information has been disclosed to

you are required to protect information
where is information?

is there going to be any more disclosing when not supposed to
is there going to be any more copying changing eg Disclosure forms

4. A January 27, 2009 letter from the Husband stated in part:

- 1) [name] you have 4 fire investigation reports I would like a copy
- 2) Courtesy copy of letter that will be submitted to Privacy Commission [sic]. shows I wanted to pay mortgage and you conspired to have me Forclosed [sic] on. You accomplished that however be sure I intend to get revenge.
- 3) I am submitting complaints to Insurance Council [sic] of Alberta and Superintendent of Insurance. I hope they revoke AMA license [sic] to operate as well as your adjustors, In fact I complained to CEO you are dirty from top down.
[...]
- 5) [...] I must insist on full disclosure please send documents [address]. I will fax confirmation I received [sic] it. Try to provide full disclosure I am tired of your refusal to let me see personal information. I hope you & [name] & [name] are there in person.

5. January 29, 2009 letter from the Husband stating in part:

- 1) Please review [Bank] NEVER received [sic] your fabricated letter withdrawing [...] letter to suspend mortgage you are still trying to deceive [sic] me & Privacy Commission intent to mislead is a [sic] offence. (Privacy Act).
- 2) I can not find any Adjustor certificate for [name] can you provide it?
- 3) Facts on [date] [name] received [sic] permission to pursue [sic] me. I had to give up ownership prior to that you had no business allowing him to stop construction In fact prior to [date] he could do nothing without your co-operation. Dates & times will be important in upcoming trial & insurance council [sic] of Alta investigations. Your delays to give [name] power were bad faith dealings.

APPLICATION OF SECTION 37 OF PIPA

[20] In their submissions to me regarding this request, the Respondents raised numerous additional issues regarding AMA and other organizations involved in the dispute regarding the insurance claims. I have not included the statements made by the Respondents on those issues, nor will I address them in this matter. I will deal solely with the one issue before me, whether AMA should be authorized to disregard access requests from the Respondents under s. 37 of PIPA. Section 37 states:

- 37 If an organization asks, the Commissioner may authorize the organization to disregard one or more requests made under section 24 or 25 if
 - (a) because of their repetitious or systematic nature, the requests would unreasonably interfere with the operations of the organization or amount to an abuse of the right to make those requests, or
 - (b) one or more of the requests are frivolous or vexatious.

1. Section 37(a) of PIPA

i) Repetitious or Systematic Nature

[21] In previous decisions I said:

- “Repetitious” is when a request for the same records or information is submitted more than once;
- “Systematic in nature” includes a pattern of conduct that is regular or deliberate.¹

[22] Since 2007, AMA has responded to numerous communications from the Respondents. Both the Husband and the Wife have made repeated requests for their “entire file” despite being informed that some information in their file has been properly withheld or is not subject to the Act and they have withdrawn consent for the disclosure of their personal information to other parties notwithstanding the fact they have commenced litigation against AMA. The Wife has also made repeated requests that AMA return or destroy her personal information.

[23] The Husband takes the position that he has not made the same requests, and that as he receives more information from AMA, more questions are raised. He argued that receiving the information he has already received from AMA “make me more determind [sic] and in fact I learn from mistakes and will ask questions better.” This is not the case. I have reviewed a number of the requests sent by the Respondents to AMA. The requests are lengthy, and while they are not worded identically they request the same information – ultimately, all of the communications from the Respondents relate to their ongoing dispute regarding the fire and flood insurance claims. The Respondents request access to personal information (which has already been provided, #P0862), they request information about the fire and flood insurance claim investigation which was the subject of P2008-IR-001 and they make allegations regarding the wrongdoing of AMA, many of which do not fall under the jurisdiction of PIPA. The Respondents continue to request the same information and make the same allegations that have been previously made and addressed.

[24] AMA submits it has received approximately 15 requests from the Respondents over less than two years (May 2007 – January 2009). AMA

¹ *Request for Authorization to Disregard Access Requests Under section 55(1) of the Freedom of Information and Protection of Privacy Act: Grant MacEwan College*, (13 March 2007, OIPC File Reference #F3885, Office of the Information and Privacy Commissioner of Alberta) at para. 25. Available online at: <http://www.oipc.ab.ca/downloads/documentloader.ashx?id=2349>.

is unable to exactly quantify the number of requests from the Respondents because their communications are not always clear as to whether they are PIPA requests for access to personal information or matters related to the litigation. To make matters more confusing, some requests, although they clearly refer to PIPA, are for admissions or information which is not subject to PIPA, whereas other communications which fall under PIPA do not reference the Act. I accept AMA's estimation of the number of requests it has received from the Respondents which likely relate to PIPA.

[25] AMA responded to the Respondents' first access request in July 2007 and my Office reviewed AMA's response and found it complied with PIPA, including a review of the records withheld under s. 24. Despite this, the Respondents continued to submit numerous requests for the same information. Between December 2008 and January 2009 alone, AMA received five separate requests from the Respondents. I note the Respondents often refer to information they have previously received from the AMA, other organizations in their requests for additional information and they have even referred to earlier findings from this Office to "support" their additional requests. For example, rather inexplicably, the Husband refers to Investigation Report P2008-IR-001 in one of his requests to AMA, seemingly to support his position that AMA should not disclose his personal information because he has withdrawn consent, and to request information about the investigation which has been withheld under the Act. He stated:

You have never had my consent to disclose my private info to anybody

Why did you continue to investigate and disclose information after I withdrew [sic] consent?

*collecting information without consent

Need reasonable for purpose [sic] of an investigation example you can do this if you have reasonable grounds to suspect fraudulent activity. Note other personal information requires consent and a standard insurance claim is not a investigation under PIPA P2008-IR-001

*What fraudulent activity did you suspect and when did investigation start & stop

The Portfolio Officer found in P2008-IR-001 that AMA was not involved in a "standard insurance claim" and was conducting an investigation as defined by the Act into the Respondents' fire and flood insurance claims, and therefore consent was not required for the disclosure of the Husband's personal information. In a later file, the Portfolio Officer concluded that AMA had properly withheld personal information relating to the investigation of the Respondents' insurance claims. Given the

previous findings of my Office which addressed the Husband's issues, the Husband's correspondence is a clear example of both the repetitious and the systematic nature of the requests received by AMA.

[26] I find the Respondents approximate 15 requests from May 2007 to January 2009 are repetitious and that they are systematic in nature.

ii) Unreasonably interfere with the operations of the organization or amount to an abuse of the right to make those requests

[27] In their submissions to me regarding this request, both Respondents commented that AMA is a large corporation and could handle their requests. AMA discusses the burden the Respondents' requests have placed upon it in its submission, but I did not receive any substantive evidence from AMA regarding whether responding to the Respondents' requests would unreasonably interfere with its operations. As such, I will not make a determination on that point. However, interference with the operations of an organization is only one consideration. I must also look at whether the Respondents' requests are an abuse of their right to make those requests.

[28] I have previously defined "abuse" to mean misuse or improper use.² In B.C. OIPC Order 110-1996³, the B.C. Commissioner stated

The Act must not become a weapon for disgruntled individuals to use against a public body for reasons that have nothing to do with the Act

AMA is not a public body, but the principle remains – PIPA is not intended to be a weapon for individuals to use against an organization for reasons that have nothing to do with the Act.

[29] AMA submits the Respondents continue to attempt to use PIPA to pose questions to AMA as a means of gaining admissions relating to litigation. The Respondents continue to use PIPA as a means to request information which they have already received, or does not exist, or which they are not entitled to receive under the Act.

[30] I stated in an earlier decision under FOIP:

² *Application by the Town of Ponoka to disregard an access request made by an applicant under the Freedom of Information and Protection of Privacy Act* (10 April 2002), Office of the Information and Privacy Commissioner of Alberta. [Ponoka] Available online at: <http://www.oipc.ab.ca/downloads/documentloader.ashx?id=2352>.

³ *Inquiry Re: Various decisions of the Vancouver School Board with respect to an applicant's access requests* (5 June 1996), Office of the Information and Privacy Commissioner for British Columbia, Order 110-1996.

I do not believe that the FOIP Act intended that an applicant could submit and resubmit the same or similar access requests to a public body simply because an applicant does not like the information he obtained or is on a mission to establish the truth of some matter.⁴

Similarly, the Respondents persist in submitting the same requests and making the same allegations in what appears to me to be a hope that AMA will provide them with more or different information than what they have already received. They have been informed by both AMA and this Office that they have already requested and have received access to the personal information to which they are entitled under PIPA. The Respondents have also been informed of the types of personal information which may be properly withheld under the Act, and this too has been reviewed by my Office. The Respondents have repeatedly stated that they want access to AMA's entire insurance file, including investigation and legally privileged materials. The Wife continues to request that AMA return or destroy her personal information, despite being notified that this is not a right granted to her under the Act and having commenced litigation against AMA.

[31] In his submission to me regarding this matter, the Husband stated:

What is the objective I am not interested in spending all my time in court doing legal litigation. My request was simple please let me see my entire file!
[...]
Simply dealing fairly with customers and showing them there [sic] file is the easiest way to prevent privacy complaints and eliminate all costs.

The Respondents have been provided access to the personal information in the insurance file to which they are entitled to access under PIPA. Further requests for the same records, or further requests for records to which the Respondents know they have no right of access under PIPA constitutes an improper use of the rights granted to individuals under the Act.

[32] The Respondents have attempted to paint themselves as victims of a large corporation, AMA, which uses its lawyers and sophisticated knowledge to prevent them from exercising their legal rights. In his submission, the Husband stated,

Hiring lawyers to hinder my PIPA request is effective but unnessisary [sic]. What I have learned is I am a poor lawyer [sic] and AMA has been very good at hindering my access to info.

The Wife stated,

⁴ Supra note 2, Ponoka.

I do want my PIPA rights and you should not allow AMA to use lawyers [sic] and litigation to avoid answering a simple request. I do not want litigation obviously do not have capacity to fight large corporation.

[...]

I want ability to file a reasonable PIPA complaint!!!

The Respondents have repeatedly exercised their rights under PIPA in making access requests as well as other requests for information and complaints to AMA regarding their insurance claims. The Respondents have also repeatedly exercised their legal rights before this Office by complaining about AMA and requesting that this Office review AMA's responses to them. AMA has provided the Respondents with access to their personal information and has continued to respond to the requests made by the Respondents after they received access to their personal information. It was only after receiving five requests within two months from the Respondents that AMA asked to exercise its right to receive authorization to disregard requests from the Respondents.

[33] I find that the Respondents' use of PIPA is not the purpose for which the Act is intended. I find the Respondents are using PIPA as a weapon to harass AMA (as evidenced by the Husband's statement in his January 27, 2009 letter, "however be sure I intend to get revenge") and to attempt to avoid following the rules for document discovery as required by the civil litigation process (as evidenced by the Husband's statement that he is "not interested in spending all [his] time in court doing legal litigation"). I find that the Respondents' requests to AMA are part of a long standing history and pattern of behaviour designed to harass, obstruct and wear AMA down, which amounts to an abuse of the right to make those requests.

[34] I accept AMA's position that the requests from the Respondents under PIPA are of both a repetitious and a systematic nature, and amount to an abuse of the right to make those requests as set out in s. 37(a) of PIPA.

2. Section 37(b) of PIPA – frivolous or vexatious requests

[35] Because I have already found that the conditions of s. 37(a) have been met, it is not necessary for me to consider the application of s. 37(b). However, given the circumstances of this case, I choose to do so.

[36] I previously stated a request is "vexatious" when the primary purpose of the request is not to gain access to information, but to continually or repeatedly harass an organization in order to obstruct or

grind an organization to a standstill⁵. Blacks Law Dictionary (Eighth Edition) defines vexatious as “conduct without reasonable or probable cause or excuse; harassing; annoying”.

[37] As I have already indicated, I find the Respondents have demonstrated a pattern of behaviour of continually and repeatedly harassing AMA through requests under PIPA. AMA has been the subject of five complaints/requests for review through this Office, one of which resulted in a published investigation report, P2008-IR-001, none of which resulted in any findings that AMA had contravened PIPA. Since opening five investigation files into AMA, I have received additional complaints from the Respondents against AMA and have declined to conduct investigations as the matters alleged have either already been investigated or reviewed, or the allegations are of matters beyond my jurisdiction.

[38] In my previous consideration of s. 37 of PIPA⁶, I allowed an organization to disregard an individual’s access request. My decision was based on the fact that the respondent had obtained extensive information and records from the organization through numerous applications and legal processes for almost 15 years. I found the respondent was aware of what personal information the organization had about her through the extensive discovery process that had accompanied the litigation and that her request was vexatious under s. 37(b) of PIPA. Similarly, the Respondents have engaged in civil litigation and are entitled to various records and information through the discovery process. They have already received access to the personal information to which they have a right to access under PIPA.

[39] For clarity, in most circumstances an individual’s purpose for making an access request is irrelevant; whether there is litigation between the parties has no bearing on an individual’s ability to exercise rights under PIPA. The fact that the Respondents have sued AMA does not entitle them to access any more or any less personal information under PIPA. In this circumstance, AMA has made a request under s. 37 of PIPA, and as such, I have chosen to consider the Respondents’ motivations in determining whether their requests are vexatious.

⁵ *Application by the Edmonton Police Service to disregard an access request made by an applicant under the Freedom of Information and Protection of Privacy Act* (4 November, 2005, OIPC File Reference # F3448 and #F3449, Office of the Information and Privacy Commissioner of Alberta). Available online at: <http://www.oipc.ab.ca/downloads/documentloader.ashx?id=2350>.

⁶ *Manulife Request for Authorization to Disregard an Access Request Under s. 37 of PIPA*, (November 29, 2005, OIPC File Reference P0197, Office of the Information and Privacy Commissioner of Alberta). Available online at: <http://www.oipc.ab.ca/downloads/documentloader.ashx?id=2346>.

[40] In his January 27, 2009 correspondence the Husband said to AMA when complaining about the foreclosure of his home “be sure that I intend to get revenge”. He also stated he was complaining to other organizations, including the Insurance Council of Alberta about AMA, and threatened several individuals when he stated, “I hope you & [name] & [name] are there in person”. It is evident that in addition to gaining access to his entire insurance file, one of the main purposes of the Husband’s communications with AMA is to annoy and harass AMA. Although the Wife has not been as threatening in her correspondence, I am satisfied that one of the main purposes behind her correspondence is also to harass and annoy AMA. I also note that my Office has opened five separate files for the Complainants against AMA, and that I have refused to accept several more complaints from the Respondents against AMA.

[41] I am satisfied AMA has established that the requests made by the Respondents are vexatious under s. 37(b) of PIPA.

DECISION

[42] An individual’s right of access to his or her own personal information is fundamentally related to one’s dignity and sense of self and a decision to take away that right from an individual is not one I make lightly. There is however, a difference between an individual’s right of access to personal information and an abuse of that right. This difference is not always clear, and each case must be carefully evaluated on its own circumstances. A remedy granted under s. 37 of PIPA must be proportionate, both to the rights being taken away from the individual, and the harm caused to the organization making the request.

[43] AMA established its long history of dealing with the Respondents and that it has previously provided the Respondents with access to their personal information. It is evident the Respondents’ concerns regarding their insurance claims, real or imagined with AMA, cannot be addressed through further access requests under PIPA.

[44] AMA has asked me to provide authorization for it to disregard “all access to information requests from the [Respondents] until after all litigation has taken its course”. Civil litigation is fraught with uncertainty, particularly with respect to timelines, and the length of time requested by AMA is unknown. Depending on the litigation process and whether any decisions are appealed, litigation may take many years. There must be exceptional circumstances for me to grant a blanket authorization for an organization to disregard requests for a limited period of time. Circumstances must be even more extraordinary to grant

a blanket authorization for an unknown length of time. I am not satisfied that the circumstances of this matter warrant such a blanket authorization regarding all future requests from the Respondents until litigation has taken its course. There may be other circumstances, unrelated to the fire and flood claims, where the Respondents require access to their personal information, and I am not satisfied that these particular circumstances warrant completely removing the Respondents' right of access to personal information from AMA.

[45] In deciding whether to authorize AMA's request to disregard future requests from the Respondents, I have considered *Mazhero v. The Information and Privacy Commissioner of British Columbia*⁷. Justice Tysoe stated:

However, in my view, there will be situations where it would be appropriate for the Commissioner to authorize a public body to disregard all future requests for general information where the applicant has so abused his or her right of access to records that the Commissioner is able to conclude with reasonable certainty from the nature of the previous requests that any future request by the applicant would unreasonably interfere with the operations of the public body. Coultas J. gave potential examples of such situations in *Crocker*⁸ when he referred to applicants making repeated requests in bad faith or making frivolous and vexatious requests. But only in very exceptional circumstances would it be appropriate, in my view, for the Commissioner to authorize a public body to disregard all future requests for personal information (or a type of personal information).

As a general rule, even though the Commissioner has determined that the repetitive or systematic nature of past and pending requests represents an unreasonable interference with the operations of a public body, he should not generally authorize a public body to disregard all future requests for records (or a type of records) without regard to whether any such requests will unreasonably interfere with the operations of the public body. As stated by Coultas in *Crocker*, the remedy fashioned by the Commissioner must redress the harm to the public body seeking the authorization. In attempting to minimize such harm, it is too drastic to authorize the public body to disregard all future requests for records (or a type of records) when it is not known whether any such requests will cause unreasonable interference with the operations of the public body. This is especially so when the requests related to personal information for two reasons. First, personal information is more restricted by its nature and it is less likely that a request for personal information will unreasonably interfere with the operations of the public body. Second, the applicant has a stronger claim to have access to records of a personal nature than to general records.

I agree an authorization to disregard future access requests should be granted only in exceptional circumstances, and that applicants have a

⁷ 1998 CanLII 6010 (BC S.C.) at paras 28 and 29 [Mazhero].

⁸ *Crocker v. The Information and Privacy Commissioner of British Columbia* (2 December 1997), Vancouver A970544 (B.C.S.C.) [Crocker].

strong claim to access records of a personal nature. However, Mazhero can be distinguished from the present case. In this case, the Respondents have already requested and received access to their personal information, at least insofar as it relates to their insurance claims. I am satisfied AMA has responded to the Respondents as required by the Act, and I am further satisfied that despite this, the Respondents persist in making the same type of requests for information related to their insurance claims. It is not necessary for AMA to establish that responding to further requests would unreasonably interfere with the operations of the organization. Even if AMA can continue to respond to each request from the Respondents without interfering with its operations, it is contrary to the spirit and intent of the Act for an organization to be required to repeatedly provide the same information to an applicant that has already been provided, or to continue to provide the same reasons as to why certain information will not be provided.

[46] I am satisfied that, to date, all of the Respondents' requests for access to personal information have related in some manner to the dispute regarding their fire and flood insurance claims. I am satisfied that with respect to the fire and flood insurance claims (including AMA's investigations of these claims and the Respondents' insurance file as it relates to these claims and coverage of these claims) the Respondents have been provided with access to their personal information, as they are entitled under PIPA. Although I am not satisfied that a blanket authorization to disregard all future requests is warranted, I am satisfied that AMA should be able to disregard a limited type of future requests. In my opinion, the current and future access requests by the Respondents under PIPA for any personal information relating to their fire and flood insurance claims are and would be:

- Of a repetitious and systematic nature and amount to an abuse of the right to make those requests (s. 37(a)); and
- Vexatious (s. 37(b)).

[47] After careful consideration of the relevant circumstances and evidence including the history of the Respondents with AMA as well as the principles and applicable sections of PIPA, I have decided as follows:

- 1) I authorize AMA under s. 37 of PIPA to disregard the five access requests it provided in support of this request;
- 2) I authorize AMA under s. 37 of PIPA to disregard any future requests from the Respondents' relating to their fire and

flood insurance claims until the litigation commenced by the Respondents against AMA has taken its course.

[48] This decision will not impact the Respondents' rights to discovery of evidence, or otherwise affect the civil litigation proceedings they have commenced against AMA regarding the disputed insurance claims. In my view, this authorization will provide AMA some measure of relief against the Respondents' requests under PIPA, but will not deprive the Respondents of their right to exercise their access rights in matters unrelated to their fire and flood insurance claims.

Frank J. Work, Q.C.
Information and Privacy Commissioner