

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER P2023-02

February 8, 2023

DIRECT ENERGY REGULATED SERVICES

Case File Number 008250 Part 2

Office URL: www.oipc.ab.ca

Summary: The Personal Complainant¹ complained that Direct Energy Regulated Services (the Organization) collected, retained, and used his personal information in contravention of the *Personal Information Protection Act* (PIPA). The Inquiry into the complaint was split into two parts.

Part 1 of this Inquiry addressed the issues of collection and use which were considered in Order P2021-10. In that Order, the Adjudicator found those activities were exempt under section 4(3)(d) of PIPA. The Adjudicator found the reasons in Order P2021-10 were insufficient to determine the issue of retention, and commenced Part 2 of the Inquiry to address that issue.

In Part 2 of the Inquiry, the Adjudicator found that the Organization's retention of the Complainant's business contact information (which was also personal information) was exempt under section 4(3)(d) up to the point at which the Personal Complainant no longer had any business responsibilities vis-à-vis the Organization. The Adjudicator found that the Organization had destroyed the Personal Complainant's information once the exemption no longer applied, and therefore had complied with section 35.

¹ The term "Personal Complainant" is used in this decision to maintain continuity of terms between this Order and Order P2021-10, which resulted from part I of this Inquiry. In Order P2021-10, the term "Personal Complainant" was used to distinguish between the Personal Complainant and the Corporate Complainant.

Statutes Cited: AB: *Personal Information Protection Act*, S.A. 2003, c. P-6.5; 1(1)(a), 1(1)(k), 4(3)(d), 35, 52

Authorities Cited: AB: Order P2021-10

I. BACKGROUND

[para 1] The full background to this matter is set out in Order P2021-10. In that Order I determined that collection and use of the Personal Complainant’s personal information by Direct Energy Regulated Services (the Organization) was exempt from review under PIPA as it was business contact information, within the terms of the exemption in section 4(3) of PIPA. However, that determination did not dispose of all of the issues raised in this Inquiry. As stated in Order P2021-10 at para. 66, whether the Organization complied with section 35 of PIPA was not determined. Accordingly, once the time permitted to the parties to file a judicial review of Order P2021-10 had lapsed, I resumed the Inquiry to consider section 35 of PIPA.

[para 2] The key facts relevant to this issue are that the Organization provided energy services to a property (the Property) partially owned by the Personal Complainant’s professional corporation (the Corporate Complainant) from 1991 to 2000, at which time it was sold. The Property was also partially owned by two other corporate entities (the Other Corporations). There existed between the Corporate Complainant and/or the Other Corporations and the Organization a Premise Vacancy Agreement (PVA), which stipulated the course of action that the Organization would take in the event that the Property became vacant. Under the PVA, the owners of the Property were required to provide contact information for a person authorized to deal with the Organization. The Personal Complainant provided his name, home address, and home telephone number to the Organization as the authorized person. That information was stored by the Organization in an “Owner Allocation Profile” (OAP). As found in Order P2021-10, the information was the Personal Complainant’s business contact information as defined in section 1(1)(a) of PIPA and his personal information as defined in section 1(1)(k) of PIPA.

[para 3] In 2016, the Organization concluded that the Property was vacant, and engaged its “vacancy process.” The first step in the process was to see if there was an OAP for the Property, and if so, to follow the instructions given in the event of vacancy which include contacting the owner listed therein. The Organization still had the Personal Complainant’s name, home address, and home telephone number on file in the OAP in 2016 and so telephoned him about the Edmonton Property. By this time the Personal Complainant had not been involved with the Organization in respect of the Property, or with the Property itself, for 16 years.

II. ISSUES

ISSUE F: Did the Organization comply with section 35 of the PIPA (retention and destruction of information)?

III. DISCUSSION OF ISSUES

ISSUE F: Did the Organization comply with section 35 of the PIPA (retention and destruction of information)?

Whether “retaining” information is exempt from PIPA under section 4(3)(d) in this case

[para 4] In Order P2021-10, I found that the Organization’s collection and use of the Personal Complainant’s personal information was not reviewable under PIPA. I found that the Personal Complainant’s personal information was also “business contact information” as that term is defined in section 1(1)(a) of PIPA, and that the circumstances of collection and use were such that those activities were exempt from PIPA under section 4(3)(d). Section 4(3)(d) of PIPA states,

(3) This Act does not apply to the following

...

(d) the collection, use or disclosure of an individual’s business contact information if the collection, use or disclosure, as the case may be, is for the purposes of enabling the individual to be contacted in relation to the individual’s business responsibilities and for no other purpose;

[para 5] However, in Order P2021-10 I found that I was unable to make a decision on whether the Organization’s retention of information was also exempt from PIPA, and that further submissions from the parties were required. I reached that conclusion because while section 4(3)(d) exempts “collection, use, or disclosure”, section 35 permits an organization to “retain” personal information. Section 35 of PIPA states,

35(1) An organization may retain personal information only for as long as the organization reasonably requires the personal information for legal or business purposes.

(2) Within a reasonable period of time after an organization no longer reasonably requires personal information for legal or business purposes, the organization must

(a) destroy the records containing the personal information, or

(b) render the personal information non-identifying so that it can no longer be used to identify an individual.

(3) Subsection (1) applies notwithstanding any withdrawal or variation of the consent of the individual that the personal information is about under section 9.

[para 6] Since PIPA does not define “collection”, “use”, “disclosure” or “retain” it is not immediately clear that “retaining” information amounts to an activity that can be exempt under section 4(3)(d). I requested that the parties provide arguments in respect of these considerations in their submissions. I address this matter first since if retaining is

exempt from PIPA in this case, I need not consider whether the Organization has complied with section 35.

[para 7] It seems to me that since section 4(3)(d) exempts collection, use, and disclosure of personal information, it must, at least to some extent, exempt retention of that information. Information cannot be collected, used or disclosed if an organization is not permitted to retain it after collection, or to have it prior to using or disclosing it.

[para 8] In light of the above, in my view, section 4(3)(d) exempts retention of business contact information, so long as that information is retained for the purposes stated in that section: to enable an individual to be contacted in relation to the individual's business responsibilities, and for no other purpose.

[para 9] The Personal Complainant argues that the Organization should have realized that he no longer had any business with the Organization after ownership of the Property changed in 2000, and the Organization started providing energy services to the new owner. My understanding is that the Personal Complainant suggests that the Organization could have conducted a land titles search, as he did, in order to determine who owned the property. In effect, the Complainant argues that as he no longer had any business responsibilities vis-à-vis the Organization, the Organization should have known that, and realized that there was no longer any purpose relating to his business responsibilities for which the Organization could have retained his information. In short, the Complainant asserts that the Organization's retention of his business contact information was not exempt from PIPA under section 4(3)(d) past the year 2000, since the requisite business responsibilities on his part were no more.

[para 10] The Organization argues that it reasonably required the Complainant's business contact information in light of how it handles PVAs, and associated OAPs. The Organization states that an OAP is only ever altered if,

- a. The property owner contacts Direct Energy to cancel the PVA;
- b. The property owner contacts Direct Energy to change its Authorized Contact Information; or
- c. A new property owner enters into a PVA with Direct Energy.

The Organization notes that under the terms of the PVA, it is a property owner's responsibility to contact it in order to terminate the PVA in the event that the property is sold. Prior to 2016, PVA's had no expiry date. The Organization has no record that the Personal Complainant ever contacted it to terminate the PVA. The Personal Complainant does not provide any evidence that he ever did. No one else entered into a PVA in respect of the Property after the Personal Complainant did. I note that the Personal Complainant asserts that the Organization cannot shift the responsibility to terminate a PVA to its customers by including a term in the PVA assigning this responsibility to the customer; however, I see no merit in this assertion. The PVA was agreed to by the parties. The

Personal Complainant advances no basis, nor do I see any, for the assertion that the Organization cannot “shift responsibility.”

[para 11] I must agree with the Organization’s position.

[para 12] While, in the broader sense of obtaining energy services from the Organization, the Personal Complainant’s business responsibilities relative to the Organization ended when the property was sold, the requirement that the Complainant contact the Organization in order to terminate the PVA endured. Since the PVA remained in effect, the Personal Complainant continued to carry the responsibility of being a contact person in the event that the Property was vacated, even if only for the Organization to determine if he was still its owner and whether his broader business responsibilities continued. As already discussed in Order P2021-10, that is the purpose for which the Organization used the Personal Complainant’s business contact information when it telephoned him in 2016. The evidence also establishes that retaining the business contact information was for that purpose as well. There is no evidence that suggests any other purpose for which the Organization was retaining the information, other than to contact the Personal Complainant in the event of vacancy, as agreed to long ago. Accordingly, the Organization’s retention of the Personal Complainant’s business contact information until in contacted him in 2016 is exempt from PIPA.

Retention after expiration of the exemption

[para 13] Regarding the applicability of section 35 to the Personal Complainant’s business contact information after the 2016 telephone call, it appears that retention continued to be exempt from PIPA for a short period. During the telephone call, the Complainant neither confirmed nor denied whether he still owned the Property. Until that matter was clarified, the Personal Complainant’s responsibility as a contact person in the event of vacancy continued; as such, so did a business responsibility purpose for retention. The Organization states that in the course of the vacancy process, it learned that neither the Personal Complainant nor the corporations who used to own the Property continued to do so. At this point, it seems that there was no longer any business responsibility in respect of which the Organization retained the Complainant’s information. As such, the exemption for retention under section 4(3)(d) ended, and section 35 became applicable. It was also at this point that the Organization destroyed the Complainant’s information. The Organization did not retain the information any longer than was reasonable for a business or legal purpose, and thus it did not contravene section 35.

IV. ORDER

[para 14] I make this Order under section 52 of the PIPA.

[para 15] I find that the Organization’s retention of the Personal Complainant’s business contact information until the telephone call in 2016 is exempt from PIPA under section 4(3)(d).

[para 16] I find that the Organization complied with section 35 once retention of information was no longer exempted under section 4(3)(d).

John Gabriele
Adjudicator