ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER P2023-03

March 3, 2023

ADVANCED UPSTREAM LTD.

Case File Number 012371

Office URL: www.oipc.ab.ca

Summary: The Complainant alleged that Advanced Upstream Ltd. (the Organization) disclosed his personal information in contravention of the *Personal Information Protection Act* (PIPA) when, through its external legal counsel, it sent a complete copy of his employment contract to another corporation (the Competitor).

The Adjudicator found that under section 5(2) of PIPA, the Organization was responsible for disclosure by its external legal counsel.

The Adjudicator found that the Complainant consented to disclosure of personal information under section 8(1) of PIPA. The Adjudicator found that it was reasonable for the Organization to disclose some personal information in the contract, but that disclosure of other personal information was unreasonable under section 19(2) of PIPA.

The Adjudicator ordered the Organization to cease disclosing the Complainant's personal information insofar as doing so was contrary to PIPA. Since the Organization had already confirmed that the Competitor had destroyed the information, no further order was made.

Statutes Cited: AB: *Personal Information Protection Act*, S.A. 2003, c. P-6.5 ss. 1(1)(f)(i), 1(1)(f)(iii), 1(1)(k), 2, 5(2), 5(6), 7(1)(d), 8(1), 8(2), 8(4), 19(1), 19(2), 20(m), 21(1), 21(1)(a)(i), 21(2), 21(2)(b), 34, 34.1(1), 52.

Authorities Cited: AB: Orders: P2006-004, P2015-10, P2018-06

Investigation Report: P2005-IR-005
Breach Notification Decision: P2021-ND-343

Cases Cited: *City Wide Towing and Recovery Service Ltd v Poole*, 2020 ABCA 305; *Globex Foreign Exchange Corp v Kelcher*, 2011 ABCA 240; *Shafron v KRG Insurance Brokers (Western) Inc.,* 2009 SCC 6; *Wild Rose Meats Inc. v Andres*, 2011 ABQB 681

I. BACKGROUND

[para 1] The Complainant is a former employee of Advanced Upstream Ltd. (the Organization). The contractual terms under which the Complainant worked for the Organization were set out in Employment Agreement and Confidentiality and Intellectual Property Agreement. A Disclosure Statement detailing the Complainant's outside interests was included as a Schedule to the Employment Agreement. I refer to these documents collectively as "The Agreements."

[para 2] The terms of the Agreements included non-disclosure, non-solicitation, and non-competition obligations (the restrictive covenants). The non-disclosure obligation, intended to protect the Organization's confidential information, was to endure permanently after the Complainant's employment ended. The non-solicitation obligation endured for twelve months after his employment ended. The non-competition obligation was limited to six months after his employment ended.

[para 3] In late March, 2019, the Organization received a tip that the Complainant may have been providing services to a competitor corporation (the Competitor). Concerned that the Complainant was at risk of breaching the restrictive covenants, on April 9, 2019, the Organization, through its legal counsel (Blake, Cassells & Graydon LLP or Blakes), sent a letter (the Letter) to the Competitor to address the situation.

[para 4] The Letter informed the Competitor that the Complainant's employment agreements (the Agreements) with the Organization contained several restrictive covenants restraining the Complainant from disclosing the Organization's trade secrets or confidential information, soliciting the Organization's clients, and competing with the Organization. As stated in the Letter, it was not intended to hinder the Complainant's ability to work; rather it was sent out of concern that the Complainant was at risk of violating his obligations under the Agreements.

[para 5] The Letter expressed the Organization's expectation that the Competitor would ensure that the Complainant complied with his obligations. The Letter concluded with notice to the Competitor that if the Complainant breached his obligations, the Organization would have no choice but to consider legal proceedings to protect its interests. A copy of a letter addressed to the Complainant reminding him of his continuing obligations to the Organization, and the Agreements, were included with the Letter.

[para 6] After it received the Letter, the Competitor contacted Blakes to discuss the Letter. During this call the Competitor informed Blakes that while the Complainant and the Competitor had engaged in discussions, the Competitor had decided not to hire the Complainant. The Competitor expressed discomfort at having the Letter, and the other documents enclosed with it. Blakes informed the Competitor that they could be destroyed, which the Competitor subsequently confirmed it did.

[para 7] On April 12, 2019, the Complainant became aware that the Organization sent the Letter and Agreements to the Competitor, and he contacted both of them about the matter. During a telephone call with the Competitor, on April 12, 2019, the Competitor informed the Complainant that the information it received from the Organization had been destroyed.

[para 8] On April 18, 2019, the Complainant filed a complaint with this Office, alleging that the Organization disclosed his personal information in contravention of the *Personal Information Protection Act*, S.A. 2003, c. P-6.5 (PIPA) when it sent the Letter and the documents included with it. Investigation and mediation were authorized to attempt to resolve the issue, but did not do so. The matter proceeded to inquiry. In the Request for Inquiry, the Complainant states that the Organization's disclosure cost him $10,000.00 to $150,000.00 worth of contract engineering income.

[para 9] On November 30, 2020, the Organization notified this Office of an unauthorized disclosure of personal information, pursuant to section 34.1(1) of PIPA. On March 10, 2022 this Office issued a Breach Notification Decision (P2021-ND-343) in respect of notification under section 34.1(1).

II. ISSUES

[para 10] Though the Organization reported an unauthorized disclosure as required by section 34.1(1), it continues to dispute the Complainant's assertion that disclosure violated his right to privacy under PIPA. Breach Notification Decision P2021-ND-343 acknowledges that the Organization disputed the Complainant's position throughout the breach notification process as well. Accordingly, the following issues remain to be considered.

A. Did the Organization disclose the personal information of the Complainant?

B. Did the Organization disclose the personal information of the Complainant with the Complainant's consent in accordance with section 7? Specifically:

Did the Organization have the consent to disclose under section 8 of the Act?

If not, then, did the Organization have the authority under the Act to disclose the personal information without the consent of the Complainant?

C. If the Organization had the authority to disclose the personal information, did it do so in accordance or in contravention of section 19 of the Act?

III. DISCUSSION OF ISSUES

Preliminary matter – Organization's Legal Counsel is not a respondent in this Inquiry

[para 11] The facts of this case indicate that Blakes was involved in sending the Letter, and, therefore, that Blakes might also have disclosed the Complainant's personal information contrary to PIPA. Under circumstances in which a lawyer is acting as agent of an organization both the Organization and Blakes are potentially responsible for disclosing personal information in contravention of PIPA (Investigation Report P2005-IR-005 at paras. 40 to 58).

[para 12] It is apparent that the Organization engaged Blakes' services when it had Blakes send the Letter. As such, the Organization's responsibility for disclosures made by Blakes arises under section 5(2) of PIPA:

> *(2) For the purposes of this Act, where an organization engages the services of a person, whether as an agent, by contract or otherwise, the organization is, with respect to those services, responsible for that person's compliance with this Act.*

[para 13] Blakes continues to be responsible for complying with PIPA while providing services to the Organization under section 5(6):

> *(6) Nothing in subsection (2) is to be construed so as to relieve any person from that person's responsibilities or obligations under this Act.*

[para 14] Blakes is not a respondent in this Inquiry. The Complainant made a separate complaint about Blakes' involvement (case #016510), but this was withdrawn prior to proceeding to the inquiry stage; therefore, the Organization is the only respondent remaining.

[para 15] The fact that Blakes is not a respondent does not affect the analysis of whether the Organization's disclosure contravened PIPA. As stated in Investigation Report P2005-IR-005 at paras. 44 and 53, the Organization's responsibility under section 5(2) cannot be avoided.

Preliminary Matter – Standard of Reasonableness under PIPA

[para 16] Section 2 of PIPA defines the standard of reasonableness that applies to its terms. I have applied that standard throughout this Order.

A. Did the Organization disclose the personal information of the Complainant?

[para 17] Section 1(1)(k) of PIPA defines "personal information" as "information about an identifiable individual."

[para 18] The Letter contains the Complainant's name, the fact that he was once employed by the Organization in a particular positon, and the fact that he was (believed to) have commenced working for or with the Competitor. This information is personal information under PIPA. The Letter also mentions that the Complainant is subject to the obligations imposed by the non-disclosure, non-competition, and non-solicitation clauses. The fact that the Complainant's ability to work may be restrained by these clauses is his personal information as well. I elaborate on this conclusion in my discussion of whether the clauses themselves are personal information, below.

[para 19] The letter sent to the Complainant included with the Letter also contains his name, the fact the Complainant was once employed by the Organization, and the fact that the restrictive covenants apply to him. The letter sent to the Complainant contains his address, which is also his personal information.

[para 20] Personal Information found in the Agreements is described below.

[para 21] The Employment Agreement includes the Complainant's name, the fact that he was employed by the Organization in a particular position, and his address. The Employment Agreement also includes all of the details of the Complainant's salary, benefits, and severance compensation from the Organization. The Complainant's agreement to article 3.4 of the Employment Agreement stating that he, personally, has no conflict of interest with the Organization is his personal information as well.

[para 22] The Employment Agreement also includes the non-disclosure, non-competition, and non-solicitation clauses. Alone, the text of these clauses does not provide information "about" anyone. However, when paired with the Complainant's name (which also appears in the Employment Agreement) they reveal that there are potential restrictions on his ability to work in some positions, for some employers, or under some circumstances. These restrictions apply to and affect the Complainant in a personal capacity, and are thus about him. Accordingly, I find that the clauses paired with the Complainant's name constitute his personal information. The fact that the Complainant's ability to work is restrained is his personal information as well, for the same reasons: the restraint affects him personally.

[para 23] The Disclosure Statement contains a list of the Complainant's non-profit and charitable activities, business activities outside of those with the Organization, and ownership interests that he has in other entities operating in the "energy business." The Disclosure Statement also reveals the Complainant's marital status, and his partner's first name.

[para 24] The Confidentiality and Intellectual Property Agreement contains the Complainant's name, the fact that he was employed by the Organization in a particular

position, and his signature. It also further describes the non-disclosure obligation that applies to the Complainant.

[para 25] Other than the information described above, none of the information sent to the Competitor is the Complainant's personal information. Some other clauses and articles in the Agreements describe the duties and responsibilities of the Complainant's position within the Organization, but they lack a personal dimension. As discussed in previous orders of the Office, such information is not personal information. See Orders P2006-004 at para. 12, P2015-10 at para. 13, and P2018-06 at paras. 26 to 33.

[para 26] The remaining other clauses and articles of the Agreements are not personal information by reason that they do not pertain to the Complainant at all, but rather set out the Organization's rights under the Agreements, or are standard terms and conditions that are not particular to the Complainant as an individual.

B. Did the Organization disclose the personal information of the Complainant with the Complainant's consent in accordance with section 7? Specifically:

Did the Organization have the consent to disclose under section 8 of the Act?

If not, then, did the Organization have the authority under the Act to disclose the personal information without the consent of the Complainant?

[para 27] Section 7(1)(d) of PIPA states,

> *7(1) Except where this Act provides otherwise, an organization shall not, with respect to personal information about an individual*
>
> *...*
>
> *(d) disclose that information unless the individual consents to the disclosure of that information.*

[para 28] The Organization submits that it had the Complainant's consent to disclose his personal information, and, even if it did not, it was permitted to disclose the Complainant's personal information without consent under the following sections of PIPA:

- Section 20(m), disclosure of personal information for the purposes of an "investigation" as defined in sections 1(1)(f)(i) and 1(1)(f)(iii);

- Section 21(1), disclosure of personal employee information for the purposes of managing a post-employment relationship; and,

- Section 21(2), disclosure of personal information for the purposes of assisting a potential or current employer in determining the Complainant's suitability or eligibility for a position.

I address the consent argument first.

[para 29] Under section 8(1) consent to disclose may be oral or written; under the circumstances described in section 8(2) it may also be deemed to have been given.

> *8(1) An individual may give his or her consent in writing or orally to the collection, use or disclosure of personal information about the individual.*
>
> *(2) An individual is deemed to consent to the collection, use or disclosure of personal information about the individual by an organization for a particular purpose if*
>
> > *(a) the individual, without actually giving a consent referred to in subsection (1), voluntarily provides the information to the organization for that purpose, and*
> >
> > *(b) it is reasonable that a person would voluntarily provide that information.*
>
> *...*
>
> *(4) Subsections (2), (2.1), (2.2) and (3) are not to be construed so as to authorize an organization to collect, use or disclose personal information for any purpose other than the particular purposes for which the information was collected.*

[para 30] The Complainant provided written consent to disclose personal information in the Employment Agreement. Article 13.2 of the Employment Agreement states,

> 13.2 The Executive acknowledges and agrees that the disclosure of the Executive's Personal Information may be required as part of the ongoing operations of the Corporation, as required by law or regulatory agencies, as part of the audit process of the Corporation, or as part of a potential business or commercial transaction or as part of the Corporation's management of the employment relationship, and the Executive hereby grants consent as may be required by Applicable Privacy Laws to such Personal Information Disclosure.

[para 31] The Employment Agreement defines "applicable privacy laws" and "personal information", respectively, as follows:

> "Applicable Privacy Laws" means any and all Applicable Laws relating to privacy and the collection, use and disclosure of Personal Information in all applicable jurisdictions, including but not limited to *the Personal Information Protection and Electronic Documents Act* (Canada) and/or any comparable provincial law including the *Personal Information Protection Act* (Alberta);
>
> "Personal Information" means information about an identifiable individual;

[para 32] The definition of "personal information" in the Employment Agreement is the same as that in PIPA. I note that since the Employment Agreement is a contract, and PIPA is a statute, it is not a foregone conclusion that the term "personal information" as used in each will encompass precisely the same set of information. The conventions and rules for interpreting contracts and statutes differ. That said, I see nothing in the

Employment Agreement that indicates that the term "personal information" as used in the Employment Agreement would not include the information I found to be personal information under PIPA in Issue A of this Inquiry.

[para 33] Given the wording of article 13.2 of the Employment Agreement, the consent granted therein includes consent to disclose personal information to a competitor or a new employer. In my view, informing a prospective or new employer of the Complainant's enduring non-competition, non-solicitation, and non-disclosure obligations involves the Organization's ongoing operations. Assuming there was a reasonable apprehension that these obligations might be violated (a question that I discuss further in the next section), taking steps to ensure that those obligations were not violated is part of the Organization's ongoing operations, which would include protecting the Organization's confidential information, relationship with its clients, and competitive position in the market.

[para 34] Since I have found that the Complainant consented to disclosure in writing per section 8(1), I do not need to consider whether he may also have been deemed to consent to disclosure. I also do not need to consider the Organization's arguments in respect of disclosure without consent under sections 20(m), 21(1), and 21(2).

D. If the Organization had the authority to disclose the personal information, did it do so in accordance or in contravention of section 19 of the Act?

[para 35] Section 19 of PIPA states,

> *19(1) An organization may disclose personal information only for purposes that are reasonable.*
>
> *(2) Where an organization discloses personal information, it may do so only to the extent that is reasonable for meeting the purposes for which the information is disclosed.*

[para 36] I consider whether the Organization complied with section 19(1) first.

[para 37] Section 19(1) requires consideration of the purpose for which information was disclosed.

[para 38] For the reasons given below, I find that the Organization complied with section 19(1).

[para 39] The circumstances under which the Organization disclosed the Complainant's personal information suggest that it reasonably apprehended that the Complainant's non-disclosure, non-competition, and/or non-solicitation obligations were at risk of being violated, and reasonably disclosed his personal information in order to protect its interests.

[para 40] While, contrary to what was stated in the Letter, the Complainant had not actually provided services to the Competitor, the Organization had received a tip that the

Complainant *may* have been providing services to the Competitor already. The Competitor confirmed to Blakes that it and the Complainant had engaged in discussions but it decided not to engage his services. The Complainant's statement that he lost between $10,000.00 and $150,000.00 in engineering contract income as a result of disclosure suggests that he was seeking to contract with the Competitor. Regardless of whether the Complainant actually provided services to the Competitor, the prospect that he would appeared imminent.

[para 41] Under the Employment Agreement, the Complainant was a fiduciary to the Organization. He was an officer of the Organization, in an executive position which would have afforded him access to all of its established and developing proprietary technology. The Competitor is a competitor with the Organization; both offer downhole equipment and services in the oil and gas industry.[1] Whether as an actual or merely prospective employee, the Complainant's interactions with the Competitor would give rise to the possibility that some of the Organization's confidential information may wind up in its competitor's hands. If that were to occur, it would be a violation of the Complainant's non-disclosure obligation.

[para 42] As well, the Complainant's non-competition obligation prohibited him from becoming employed by a competitor for six months following the end of his employment with the Organization. The Letter was sent within that time frame, so, subject to the enforceability of the non-competition clause and the timing of any potential employment contract, the Letter could potentially have forestalled a breach of that term of the Agreement. (I discuss the enforceability of the non-competition clause further on in this Order).

[para 43] In my view, it was prudent for the Organization to take proactive steps to safeguard its interests even though neither it, nor presumably the person providing the tip, were necessarily privy to the precise nature of the association between the Complainant and the Competitor. While the Organization might have tried to verify the information it had received, because the Competitor's response would have required disclosure by it of the Complainant's personal information without any obvious reason for doing so, there may have been no reason to anticipate a mere inquiry would be fruitful.

[para 44] I acknowledge that it did not follow from the circumstances discussed above that it was inevitable or necessarily likely that the terms of the Agreements would be breached; rather this outcome became a reasonable possibility. I believe that this possibility was sufficient to make it reasonable for the Organization to preemptively take steps to avoid this outcome. This is because once a former employee has revealed confidential information, or becomes engaged in competitive activities, the former employer may suffer irreparable harm. See for example, *Wild Rose Meats Inc. v Andres*, 2011 ABQB 681 at paras. 54 – 57.

[1] As stated on the Organization's and Competitor's Websites: http://advancedupstream.com/about-us/ and https://northstardst.com/

[para 45] In sum, it is understandable that in the circumstances the Organization was concerned about the potential harm to its business interests. The content of the Letter, as well as the submissions from the Organization, indicate that its purpose for disclosure was a proactive step taken to protect its interests. The Letter informed the Competitor of the Complainant's obligations, and warned of the possibility of litigation in the event of a breach. The Agreements and letter to the Complainant included with the Letter, informed the Competitor that there were, in fact, such clauses that applied to the Complainant and that the Complainant was aware of, and should take precautions against, violating his obligations to the Organization. Given the Organization's apprehension of a threat to its interests arising from the Complainant's involvement with the Competitor, disclosing personal information in order to protect those interests was reasonable.

[para 46] I note that the Organization's arguments that it might have been permitted to disclose personal information without consent under sections 20(m), 21(1), and 21(2) suggest that the purposes mentioned in those sections may also have been purposes for disclosure.

[para 47] Section 21(1)(a)(i) contemplates disclosing information for the purposes of managing a post-employment relationship. Seeing that the Complainant's non-disclosure and non-competition obligations were honoured would fall under the rubric of managing a post-employment relationship. That is a reasonable purpose for disclosure as well. To be clear, here I am stating that the purpose stated section 21(1)(a)(i) is a reasonable purpose for disclosure. I am not concluding that the Organization met the requirements to disclose without consent under that section. Section 21(1)(a)(i) requires that disclosure be *solely* for the purpose of managing a post-employment relationship. As described above the Organization disclosed information for other reasons, including protecting its interests and warning the Complainant and the Competitor that litigation would commence if the restrictive covenants were breached.

[para 48] Section 20(m) contemplated disclosure for the purposes of an investigation. Under section 1(1)(f)(i) an investigation includes an investigation related to the breach of an agreement. Under section 1(1)(f)(iii) it includes investigating circumstances or conduct that may result in relief or a remedy being available at law. However, while the Organization was concerned that the Complainant may violate the restrictive covenants, it does not appear to have been investigating that possibility. The Letter was not inquisitive, rather, it was an assertion of the Complainant's obligations to the Organization, and notice that legal action could result if a breach occurred. The Letter was aimed at preventing or addressing a breach, not determining if one had in fact occurred, or securing a remedy.

[para 49] The Organization's arguments with respect to section 21(2) suggest that disclosure was also made for the purpose stated in that section. The purpose stated in Section 21(2)(b) is that of assisting a potential employer to determine an individual's suitability for a position. However, I do not find that the Organization sent the Letter with a view to assisting the Competitor to determine the Complainant's suitability for employment in a particular position. As stated in the Letter, the Organization was

operating under the belief that the Competitor had hired the Complainant already. Thus, under the Organization's theory, there was no determining left to be done; once an individual is hired for a position, the determinations as to suitability and eligibility have already been made. Additionally, the Letter did not speak to the Complainant's personal qualifications for any position, nor was it written in respect of any particular position, and expressly stated that it was not meant to be an impediment to his employment.

[para 50] I now consider whether the Organization complied with section 19(2).

[para 51] The Organization argues that it was reasonable to disclose the entire Agreements – and all of the personal information therein – owing to the unique challenges of enforcing restrictive covenants such as those that apply to the Complainant.

[para 52] A useful summary of the principles applicable to enforcing restrictive covenants is given by Slatter, J. (dissenting on other grounds) in *City Wide Towing and Recovery Service Ltd v Poole*, 2020 ABCA 305 at para. 70. Restrictive covenants are presumptively unenforceable. As the one seeking to enforce the covenants, the Organization would bear the burden of proving otherwise in a legal action.

[para 53] In order to prove that restrictive covenants are enforceable, the Organization would have to demonstrate that they are reasonable with regard to their temporal, geographic, and business scopes, taking into account the nature of the relationships and any power imbalance between the parties to the contract containing the covenants. See *Shafron v KRG Insurance Brokers (Western) Inc.,* 2009 SCC 6 at paras. 22 and 26.

[para 54] Thus, the Organization argues, "The disclosure of this information to [the Competitor] was reasonable to show that these restrictions were, in fact, enforceable and the Company was not simply "blowing smoke" about this matter." Here, I understand the Organization's argument to be that disclosing information relevant to the enforceability of the restrictive covenants serves the purposes of disclosure by demonstrating that a breach of the covenants would be actionable; hence the disclosure was useful for protecting its interests.

[para 55] While I agree that disclosing the whole of the Agreements provided the Competitor information that could be relevant in determining whether the restrictive covenants were enforceable, I do not find that disclosing *all* of the personal information in the Agreements was reasonable to meet that purposes for disclosure in this case.

[para 56] Disclosing the Complainant's name and the fact that he was previously employed by the Organization in a particular position was reasonable under the circumstances. The Organization could not inform the Competitor that the Complainant had continuing obligations to it without doing so. This information was disclosed in compliance with section 19(2). Disclosing the fact that the Complainant was subject to non-disclosure, non-competition, and non-solicitation clauses was reasonable for the same reasons.

[para 57] Conversely, disclosing the Complainant's address, marital status, the name of his spouse, signature, conflict of interest statement, and interests listed in the Disclosure Statement was not reasonable. The Organization does not indicate how, if at all, that information would be relevant to demonstrating the enforceability of the restrictive covenants, and I cannot see how it would be. Disclosing this information goes beyond a reasonable extent, and does not comply with section 19(2).

[para 58] Lastly, I consider personal information about the Complainant's salary, benefits, and severance compensation.

[para 59] The Organization notes that this information demonstrates consideration paid for the restrictive covenants. Whether consideration was paid for such covenants is relevant to determining enforceability. *Globex Foreign Exchange Corp v Kelcher*, 2011 ABCA 240 at para. 73. While the information is relevant to the enforceability of the restrictive covenants, disclosing it was not reasonable in this case.

[para 60] By disclosing the compensation portion of the Employment Agreement entirely, the Organization revealed more than the mere fact that consideration was provided for the restrictive covenants. It revealed the precise details of the Complainant's compensation package. Under the circumstances, where no legal action had commenced and no one had challenged whether consideration had been paid, that level of detail goes beyond what is reasonable. The Organization might simply have informed the Competitor that it had provided consideration to the Complainant for the covenants. Financial information about an individual is sensitive information; revealing it could embarrass an individual, or undermine their bargaining power in future employment negotiations. Indeed, in this case the Competitor wound up with the Complainant's compensation information in the course of deciding whether or not to engage his services.

[para 61] In closing on this issue, I note that I have considered whether disclosure of all the information was reasonable under section 19(2) for the purposes stated in sections 21(1), and found that it was not. Thus, even if I had found the Organization was authorized to disclose the Complainant's personal information without consent under that section, my conclusion that disclosure was unreasonable would be the same. Regarding sections 21(2) and 20(m), as stated above, I find that the Organization did not disclose personal information for the purposes stated in those sections.

IV. ORDER

[para 62] I make this Order under section 52 of the Act.

[para 63] I order the Organization to cease disclosing the Complainant's personal information in contravention of PIPA.

[para 64] In the course of addressing the Organization's breach notification under section 34.1(1), the Organization contacted the Competitor and requested that it destroy the information sent to it, and was informed that the information had been destroyed. As

noted already, just after disclosure, the Competitor informed the Complainant that the information had been destroyed. I see no reason to believe that the Competitor still has the information. Accordingly, I do not need to order the Organization to request its destruction again.

[para 65] I order the Organization to confirm to me and the Complainant in writing that it has complied with this Order within 50 days of receiving a copy of it.

_____
John Gabriele
Adjudicator