

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER P2023-04

March 31, 2023

ALBERTA TEACHERS' ASSOCIATION

Case File Number 007030

Office URL: www.oipc.ab.ca

Summary: An individual (the Applicant) made an access request to the Alberta Teachers' Association (the Organization or the ATA) under the *Personal Information Protection Act* (the Act) for records of a certain individual's (individual A's) conversation with the ATA about individual A's meeting with the Applicant on August 23, 2013, and all information pertaining to the Applicant's allegations of individual A's unprofessional conduct against the Applicant. The Applicant also sought the name of the ATA member that individual A spoke to at the ATA on or near August 23, 2013. The Applicant also asked the Organization for access to individual A's personal information and argued that section 20(m) permitted the Organization to disclose individual A's personal information to her without individual A's consent.

The Organization responded and refused to provide the Applicant with access citing section 24(3)(b) of the Act. In addition, the Organization stated that it was not clear that section 20(m) permitted the disclosure of third party personal information to the Applicant in this instance.

The Applicant requested a review of the Organization's response and subsequently, an inquiry. She specifically argued that section 20(m) permitted the Organization to disclose individual A's personal information to her without individual A's consent. She asked this Office to order the Organization to disclose individual A's personal information to her under section 20(m) of the Act.

The Adjudicator found that the Organization had properly withheld the information from the Applicant under section 24(3)(b) of the Act. The Adjudicator found that the name of the ATA

member that individual A spoke to on or near August 23, 2013 was not personal information about the ATA member in these circumstances; however, it was also not personal information about the Applicant and therefore the Act did not apply to it, and the Organization was not required to provide it to the Applicant.

The Adjudicator found that: there was no provision in the Act which allowed the Applicant to request access to anyone's personal information other than her own; there was no provision in the Act which allowed the Applicant to request that this Office review the Organization's decision not to provide her with individual A's personal information; there was no provision in the Act which permitted the Adjudicator to review the Organization's decision, or the reasons for its decision, not to disclose individual A's personal information to the Applicant; there was no provision in section 52(2) of the Act which gave the Adjudicator the power to order the Organization to disclose individual A's personal information to the Applicant; there was no provision in the Act which allowed the Applicant to make a complaint that the Organization refused to disclose individual A's personal information to her under section 20(m); there was no provision in the Act which permitted the Adjudicator to investigate a complaint by the Applicant that the Organization did not disclose individual A's personal information to the Applicant under section 20(m), and; there was no provision in section 52(3) of the Act which gave the Adjudicator the power to make an order either confirming the Organization's decision not to provide individual A's personal information to the Applicant under section 20(m), or overturning the Organization's decision not to disclose individual A's personal information to the Applicant under section 20(m) of the Act.

Statutes Cited: AB: *Personal Information Protection Act*, S.A. 2003, c. P-6.5, ss. 1, 7, 20, 24, 36, 46 and 52.

Orders Cited: AB: Orders P2006-004, P2007-002, P2012-09, P2019-06, P2020-05, P2023-01, and F2019-41.

Decisions Cited: AB: P2011-D-003.

I. BACKGROUND

[para 1] On August 22, 2017, an individual (the Applicant) made an access request under the *Personal Information Protection Act*, S.A. 2003, c. P-6.5 (the Act) to the Alberta Teachers' Association (the Organization or the ATA) for the following information:¹

Records of [individual A]'s conversation with the ATA about her meeting with [the Applicant] on August 23, 2013 and all information pertaining to her unprofessional conduct against [the Applicant]. [Individual A] wrote a letter admitting to her discrimination at this meeting and agreed to send it to Superintendent [individual B] & [individual C]. Where is this letter?

Who was the ATA member that [individual A] spoke to on or near August 23, 2013? Who persuaded her to break her verbal agreement with [the Applicant] and destroy the email she

¹ Applicant's Request to Access Personal Information form dated August 22, 2017 (Applicant's Access Request).

already had written in front of [the Applicant] between 1:30 pm and 3:00 pm admitting to discriminating against [name of Applicant] and agreeing to try and correct her error?

[para 2] The Applicant specified the following time period for her request:

August 2013 (especially August 23, 2013 phone conversation from [individual A] to ATA) to end of communication about this issue. August 2017 if necessary. It is still unresolved.

[para 3] The Applicant further stated in her access request (emphasis in original):

[The Applicant's] Human Rights were violated and the ATA has a statutory duty to protect their employees from such harm, regardless if it is stated in the Collective Agreement or not. The Human Rights Act takes precedence over the Collective Agreement. See below:

The union's role in protecting human rights

Unions cannot contract out of human rights legislation. Collective agreements for unions, whether silent on the issue of human rights or inclusive of only certain human rights, have been interpreted as protecting all of the human rights that are covered within a particular province's human rights legislation. A collective agreement is subject to the statutory provisions of human rights legislation and other employment-related statutes.

While parties may contract to protect a greater amount of human rights within a collective agreement, the ***Alberta Human Rights Act* is the fundamental law that governs if there is a conflict between the AHR Act and other contracts or legislation.**

It is discriminatory for a union to:

- participate in the creation of a discriminatory policy in the collective agreement or other organization policy;
- refuse to fulfill its duty to accommodate to the point of undue hardship;
- **exclude, expel or suspend a member based on one of the protected grounds; or**
- **refuse to file a grievance when the refusal is based on a protected ground, such as gender or race.**

Courts and human rights tribunals have found discrimination when unions have:

- excluded females from membership lists (*Sacrey v. UFCW, Local 1252* (1988), 9 C.H.R.R. D/4982, Newfoundland Board of Inquiry);
- provided a male musician because of a customer's request, even though a female musician had been referred to that job (*Bankowski and AFM, Loc. 247* (Re) (1994), 21 C.H.R.R. D/1, British Columbia Human Rights Commission);
- refused to refer a woman to a job on a boat where there were no separate sleeping quarters for women (*Oster v. I.L.W., Local 400* (2001) 212 F.T.R. 111, Federal Court Trial Division affirming (2000) C.H.R.D. No. 3, Canadian Human Rights Tribunal);
- discriminated against a member who was transsexual (*Ferris v. Office and Technical Employees Union, Loc. 15* (1999), 36 C.H.R.R. D329, British Columbia Human Rights Tribunal);
- participated in a discriminatory buyout package that excluded members on sick leave. *Canada Safeway Ltd. v. Alberta* (Human Rights and Citizenship Comm.) (2000), 44 C.H.R.R. D/272, Alberta Court of Queen's Bench (affirmed by Alberta Court of Appeal (2003), 47 C.H.R.R.D/220; leave to appeal dismissed by the Supreme Court of Canada [2003] S.C.C.A. No. 448);
- opposed the employer's attempt to reasonable accommodation (*Renaud v. Central Okanagan School District 23* (1992), 95 D.L.R. (4th) 577, Supreme Court of Canada).

Revised: March 23, 2013

Under PIPA, the ATA can disclose information **without the consent of the individual** for an investigation or legal proceedings. The Department of Education or Minister of Education should be given this information to make a correct decision about the PRCAC Hearings that were held on August 15, 2017. Maybe justice would occur if the ATA would share the truth with the Department of Education. There must be a way to access the truth or corruption will always win and integrity will always lose. Please find a loophole to promote justice ... THIS TIME! It will be worth it!

[para 4] On October 10, 2017, the Organization responded to the Applicant stating:²

... sections 3 and 26 of the Act make it clear that PIPA is a mechanism for individuals to gain access to their own personal information. The Association is prohibited from disclosing the personal information of third parties under section 24(3)(b) of the Act. In your request, you made reference to section 20(m) of the Act (disclosure without consent). It is not clear that 20(m) permits the disclosure of third party personal information to you in this instance.

[para 5] On October 11, 2017, the Applicant submitted a Request for Review/Complaint form to this Office, asking this Office to review the Organization's response to her access request. In particular, she stated:³

Please ensure if section 20(m) applies to my request. I belief [sic] it does.

[para 6] Along with her Request for Review/Complaint form, the Applicant submitted a letter in which she explained why she was requesting a review of the Organization's response to her access request and why she believed the Organization was required to disclose the information she requested, to her, under the Act. She stated (emphasis in original):⁴

*I would like a **review** of my PIPA request dated on August 22, 2017 from the Alberta Teachers' Association.*

First of all, I believe the information that I want disclosed to the proper organizations (Human Rights Commission, Department of Education, Peace River School Division No. 10 and the OIPC), is actually personal information concerning me. It also concerns the guilty party, [individual A], but if the release of this information would clear my name and validate the truth, then how can the ATA use a privacy law against me, when the principal, [individual A], is guilty of a breach of an agreement, a contravention of a law (violation of a contract) Discrimination, unprofessional conduct and breach of trust and fiduciary duty or a principal under the School Act and breach of privacy under PIPA (File #001153)?

The Privacy Commissioner has still not dealt with this inquiry (File #001153) after 4 years of waiting. It is not due to be concluded until April 2018. What a farce! The Peace River School Division No. 10, along with [name of individual A], intentionally obtains confidential union documents (Breach of Privacy) to sabotage my Human Rights Complaint and apparently, no one is doing anything to stop them! So the law doesn't have to be followed by the government of the unions?

² Organization's response dated October 10, 2017.

³ Applicant's Request for Review/Complaint form dated October 10, 2017 and received October 11, 2017 (Applicant's Request for Review/Complaint form).

⁴ Applicant's letter dated October 11, 2017, attached to Applicant's Request for Review/Complaint form.

To be clear, [individual A], the principal of [name of school], discriminated against me and treated me unfairly for 3 years. On August 23, 2013, I had a meeting with her about her unprofessional conduct against me. **She admitted to the discrimination and agreed to correct her error to try and resolve this issue by writing an email to the superintendent and the assistant superintendent of this public body.** Instead of resolving this issue, Superintendent [individual B] decided to abuse his power and retaliate against me. He has picked the wrong target. I will no [sic] allow this to occur without fighting back! However, **I believe the ATA also persuaded [individual A] to break her verbal agreement with me, even though she was guilty of unprofessional conduct. In other words, the ATA chose to protect the wrongdoing and harmed an innocent victim in the process.** There is much evidence of this. I think [individual D] quit the ATA because she wouldn't go along with this corruption against me. You can only imagine the respect I have for her!

I felt validated when [individual A] admitted her discrimination, but it was short lived. I watched her write the draft copy at our meeting and her verbal agree [sic] was that once she typed it up she would send it to [individual B] and [individual C]. If I took a picture of the letter with my phone or recorded our meeting, I would be teaching, instead of **fighting this corruption.** I never dreamed [individual A] would participate in a Breach of Trust and lie about our verbal agreement or predict the sadistic actions of superintendent [name of individual B] and deputy superintendent [individual E]. These are the people you have in charge of the education of our children.

Actually, all the processes (Department of Education Investigator – [individual F] and the ATA Investigator – [individual G]) didn't even meet with [individual A]. So, if she is under investigation and the investigators don't even meet with her, how can a proper investigation occur? If you investigate a rape and you don't speak with the rapist, just the victim, of course, the organization can use insufficient evidence because they didn't INVESTIGATE! The Human Rights was just as bad. They at least spoke to her, but refused to ask her about the email she agreed to write to the superintendent. She is being completely protected and refuses to answer any questions in any investigations especially about our verbal agreement and her admission of discriminating against me. **Does she actually think I will let this go?**

I believe the ATA is misinterpreting the rules of PIPA when they denied me access to the information concerning my meeting with [individual A]. The ATA do not need [individual A]'s consent to disclose the truth under limited circumstances. If the documentations concerning the unprofessional conduct of [individual A] towards me are **for investigation and legal proceedings then my access to her information is warranted under Section 20(m).** If PRSD No. 10 accessed my documents using the same reason in File #00153 [sic], then I should be entitled to receive these documents just like they did. I have a Human Rights Case and Judicial Reviews and FOIP Inquiries and Appeals ongoing pertaining to this injustice. If they have illegally accessed this information, which has jeopardized my chances of winning my case, then I should have access as well because section 20(m) states it is legal.

[Individual A] informed me, she spoke to a member of the ATA before our meeting on August 23, 2013 and to my knowledge she spoke to someone after, as well. It would have been around 3:00 pm on August 23, 2013. They spoke about our meeting **and I believe the ATA member told her to lie and destroy her letter and not to send it as she verbally agreed. You only have to check the records. I know she is guilty of breaking our agreement and a**

breach of trust, I just need the records to prove it. The ATA has the records and are refusing to hand them over in an investigation so justice can't prevail.

Under the rules of PIPA, section 20(m) I should be able to access this personal information concerning me without [individual A]'s consent for the following reasons:

- ***it's for an investigation or legal proceeding***
it's reasonable for the purposes of an investigation or legal proceeding
under section 20: Disclosing Information
 - ***it is reasonable to use without consent considering all relevant circumstances including the nature and sensitivity of the information***

Apparently, the Human Rights Act takes precedence over any collective agreement and the ATA has again failed to protect me from this abuse properly even though I grieved this and they refused to pursue the injustice. Unfair Representation!

Please inform me if I am allowed access to the information I requested from the ATA (in August 2013 and beyond to April 2015) pertaining to this meeting I had with [individual A] under PIPA and any relevant information concerning her [sic] my unprofessional conduct complaint about her towards me.

I do have a Human Rights Complaint under the area of employment practices and under the ground of Ancestry (NL Accent) and Age. I was also denied a permanent job because of my experience (It made hiring me more expensive).

Therefore, if a School Board is denying me my Human Rights and is excluding me from being hired, it is the union's job to protect me from this discrimination. See information on the PIPA form.

The power of the TRUTH should be more powerful than the Abuse of Power. So far, I have no evidence that this is true, but I am trying. . . .

Any level of corruption is not health for any system and I want it noted that I am completely aware of what I'm up against and now, so are you. I expect a fair process and the Acts to be enforced and consequence to occur if violations have occurred. PRSD No. 10 has destroyed my career illegally by violating the School Board Policies, The School Act, The Human Rights Act, and The FOIP Act. If it is the responsibility of the different departments to ensure these Acts are being followed and enforced, then I hope when violations occur, strict consequences are assigned.

If my validation occurs 4 years after the original event, then I expect to receive proper compensation for the damage this has caused. I have [family information] and my teaching career has been taken from me by the unprofessional actions of [individual A] and this Board. It is illegal. This Commissioner has the authority to have the truthful information released to the proper organizations, so justice can prevail.

I, as the complainant, will continue to take all necessary steps to make sure the truth is revealed to higher authorities. I will not let these unprofessional actions against me go unnoticed. Peace River School Division No. 10 and the ATA have underestimated by [sic] strength of character and courage. I am determined to stand up for this corruption, protect my human rights, and ensure that justice prevails.

...

[para 7] The Commissioner authorized the Director of Mediation and Investigation to investigate and attempt to settle the matter. At the conclusion of this process, the Applicant requested an inquiry.

[para 8] Along with her Request for Inquiry form, the Applicant submitted a letter in which she explained why she was requesting an inquiry into the Organization's response to her access request and why she believed the Organization was required to disclose the information she requested, to her, under the Act. She stated (emphasis in original):⁵

*I would like to request an **inquiry** into my PIPA request dated on August 22, 2017 from the Alberta Teachers' Association file #007030.*

*The issues I have with this **obstruction of justice** are all outlined in my letter requesting a review in my October 11, 2017 letter to the OIPC.*

I am extremely tired of the attempts of a cover up concerning the deliberate discrimination against me by [individual A] and the ATA's attempt to protect this individual for her breach of fiduciary duty against me. The ATA is clearly guilty of unfair representation concerning my rights to be properly protected from this abuse of power by withholding crucial information from me to support the truth of what occurred on August 23, 2013 and the four years prior to this meeting.

*Ironically, my privacy was violated by the Peace River School Division No. 10 when they used confidential documents accessed from the ATA against me, which they obtained and distributed illegally to the Human Rights Commission **without proper authority from ATA**.*

Nothing has been done about this contravention of PIPA involving File #001153.⁶

So as a citizen of Albertan [sic], my rights to privacy are not being protected, only because the OIPC is allowing this public body (PRSD No. 10) and ATA to contravene PIPA because it is a government department or Union Organization that is violating the Act. In other words, you are supporting the violations of this Act by a public body or Union, which clearly insinuates the government and unions are above the law.

*This is an **obstruction of justice**. The ATA has concrete evidence that would clear my name in this investigation that proves my innocence. They are choosing to withhold this in this investigation for several reasons:*

- 1) It proves the ATA is **guilty of unfair representation** towards [the Applicant] by choosing to protect the breach of duty of the principal, [individual A], who admitted to discrimination against [the Applicant] on August 23, 2013 and agreed to send a letter/email she drafted at this meeting with [the Applicant] to Superintendent*

⁵ Applicant's letter dated September 30, 2018, attached to Applicant's Request for Inquiry form dated September 30, 2018 (Applicant's Request for Inquiry form).

⁶ I note that the complaints the Applicant made against the PRSD No. 10 in File #001153, have been addressed by the adjudicator in Order F2019-41, issued pursuant to the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25.

[individual B] and [individual C] (Assistant Superintendent of Human Resources) explaining her unprofessional conduct towards [the Applicant] over the 4 years [the Applicant] worked under her.

- 2) *It proves [individual A] did call the ATA and ask for advice concerning her meeting with [the Applicant] on August 23, 2013 and the ATA may have advised her to **breach her duty and breach her verbal agreement she had with [the Applicant]**. [Individual A] verbally agreed to send the drafted letter to the two mentioned people of Peace River School Division No.10 once it was typed, but it was never sent and [the Applicant] was never informed of why this breach of her verbal agreement with [individual A] occurred and who convinced [individual A] to breach her agreement. [The Applicant] left the meeting feeling validated and assumed the error would be corrected. What followed next was an abuse of power, retaliation, and violations of the School Act, Human Rights Act, Teaching Profession Act, PIPA, and the FOIP Act.*
- 3) *The ATA, [individual H], used this incident and the legal knowledge that the PRSD No. 10 used defamation and libel intentionally against [the Applicant] by unjustly stating her references were unsupportive of her hiring when they were overwhelmingly supportive of hiring her in a written report into an investigation. (This is a criminal indictable offence under 300 and 301 of the Criminal Code of Canada). **The ATA used this information to their advantage to help them in bargaining their Collective Agreement with PRSD No.1- during May 2014 and Sept 2014.** Once the ATA received what they wanted from this public body, the ATA decided to drop [the Applicant's] legal case against PRSD No. 10 and her ATA complaints against her colleagues and administrators under this public body, as per their deal. In other words, **the ATA, who's responsible for protecting teachers against this form of abuse, actually did the opposite and threw [the Applicant] UNDER THE BUS to protect their own interest by using her information to harm her and protect the guilty party.** In doing so, they violated many Acts and Laws (insert the term – **CUT THROAT**).*
- 4) *Please note the Privacy Officer, [individual D], refused to participate in such unlawful actions against an innocent teacher, [the Applicant], and left her position as the ATA Information and Records Manager Privacy Officer, abruptly. This is exactly what happens when a person is unwilling to go along with corruption and cover-ups. To hold onto their own integrity, they are forced to either lose their job or leave their positions. **How sad is it that having integrity is actually detrimental to your character and employment here in Alberta?** That is what this organization along with the government is proving to all Albertans. I am merely pointing out the facts and feel it is highly appropriate to express my **upmost respect for [individual D]**. I can only hope she found a better and more ethical means of employment that didn't require her to compromise her integrity.*

An inquiry is most definitely needed in this file. I really could care less what the Director, Mediation and Investigator [sic] of this file concluded. In all my files brought before the FOIP or PIPA the investigators have ALL ignored the truth and tried desperately to twist it to try and justify the public body's and ATA's corruption.

All I can state is that I know you have been given the authority to deal with these files properly and you have a duty to act in accordance with the Acts and Laws, but if you contravene that duty and violate the Acts to cover up known injustices, then that is something you are responsible for and accountable for . . . NOT ME.

I can only state I will not consent to a cover up and provide you with the truth over and over again. If you decide to ignore my evidence and obstruct justice, by not allowing the truth to be uncovered as section 20(m) of PIPA permits, then it is your organization and the ATA that are responsible for the injustice that follows. I am aware I lack the authority to enforce the Acts and Laws, but I am unwillingly [sic] to go along with the truth being covered up and the corruption.

Under the rules of PIPA, section 20(m) I should be able to access this personal information concerning me without [name of individual A]’s consent for the following reasons:

- ***it’s for an investigation or legal proceeding
it’s reasonable for the purposes of an investigation or legal proceeding***
under section 20: Disclosing Information
- ***it is reasonable to use without consent considering all relevant circumstances
including the nature and sensitivity of the information***

Apparently, the Human Rights Act takes precedence over any collective agreement and the ATA has again failed to protect me from this abuse properly. Unfair Representation!

As stated many times before, the power of the TRUTH should be more powerful than the Abuse of Power.

Any level of corruption is not healthy for any system and I want it noted that I am completely aware of what I’m up against and now, so are you. I expect a fair process and the Acts to be enforced and consequences to occur if violations have occurred. PRSD No. 10 has destroyed my career illegally by violating the School Board Policies, The School Act, The Human Rights Act, PIPA, and The FOIP Act and the Criminal Code of Canada. The ATA has treated me no better. If it is the responsibility of the different departments to ensure these Acts are being followed and enforced, then I hope when violations occur, strict consequences are assigned.

*I, as the Complainant, am determined to stand up to this corruption, protect my human rights, and ensure that justice prevails. [Individual A] is guilty of discriminating against me and admitted to this on August 23, 2013. She also breached a verbal agreement to sent [sic] a letter verifying all of this on the same day. Only an innocent person would fight this long and hard to have the truth revealed. You all know I am innocent, but you have chosen to try and use loopholes to deny justice. If that is your path, then lets [sic] hope **Karma** takes care of the rest.*

...

[para 9] The Commissioner agreed to conduct an inquiry and delegated her authority to conduct it to me.

[para 10] In her rebuttal submission, the Applicant identified the remedy she sought from this Office:⁷

⁷ Applicant’s rebuttal submission dated February 14, 2022 at para. 39, and repeated in the Applicant’s additional submission dated February 18, 2022 at para. 11.

39. The Applicant seeks an Order confirming that the Association did not properly withhold the Record in accordance with section 20 (m) of PIPA. The Applicant is requesting access to the Record in Issue under section 20(m) of PIPA.

II. RECORD AT ISSUE

[para 11] The record at issue is one document comprised of four pages and described by the Organization in its Index of Records provided to the Applicant and to this Office as “Advice from Association to Member” (the Record).⁸

III. ISSUES

[para 12] The Notice of Inquiry, dated October 22, 2021, states the issues for this inquiry as follows:

1. Is the access request for the Applicant’s personal information?
2. Is the information the Organization withheld, or any of it, the Applicant’s personal information under the Act?
3. If the Organization refused to provide access to the Applicant’s personal information in its custody or control, did it do so in accordance with section 24(3) (mandatory grounds for refusal)? In particular, did the Organization properly apply section 24(3)(b) of the Act (the information would reveal personal information about another individual) to any of the withheld information?
4. If the withheld records contain or consist of personal information of the Applicant, and if section 24(3)(b) applies to these records, is the Organization reasonably able to sever the information to which these sections apply, and provide the personal information of the Applicant, as required by section 24(4)?
5. Does section 20(m) in Part 2 of the Act (disclosure without consent where the disclosure of the information is reasonable for investigation or legal proceeding) apply to permit the Organization to disclose third party personal information to the Applicant in response to her access request for her own personal information under section 24(1)(a) in Part 3 of the Act?

[para 13] The Applicant raised numerous issues in her initial,⁹ rebuttal, and additional submissions about the actions of the Peace River School District No. 10 (the PRSD No. 10), such

⁸ Organization’s Index of Records received January 7, 2022.

⁹ The Notice of Inquiry dated October 22, 2021 states “Applicants who have no additional arguments or evidence to provide for the inquiry (beyond their Request for Review and Request for Inquiry forms, and any attachments) must provide a letter to the Commissioner's Office and to the each Party (or their Representative)* named on the first page of this Notice indicating that they are relying on the attachments to this Notice of Inquiry (that is, the Request for Review and Request for Inquiry forms and any attachments) to be their initial submission. These forms and their attachments do not need to be resubmitted”. By way of letter dated October 28, 2021, the Applicant advised that she would be “relying on my initial submission”. I accept that this means she is relying on her Request for

as that the PRSD No. 10's actions violated "*the School Board Policies, The School Act, The Human Rights Act, PIPA, and The FOIP Act and the Criminal Code of Canada*".¹⁰

[para 14] The Respondent in this inquiry is the ATA. The Applicant's issues with the actions of the PRSD No. 10 do not form part of this inquiry.

[para 15] The Applicant also raised numerous other issues in her initial, rebuttal, and additional submissions about the actions of individual A and the Organization, such as that individual A was "*guilty of a breach of an agreement, a contravention of a law (violation of a contract), Discrimination, unprofessional conduct and breach of trust and fiduciary duty of a principal under the School Act and breach of privacy under PIPA (File #001153)*",¹¹ and that the Organization breached its duty of fair representation of her.¹²

[para 16] This inquiry deals only with File #007030. This inquiry involves only the Organization and is limited to the specific issues set out in the Notice of Inquiry. The other issues raised by the Applicant do not form part of this inquiry. They have either been addressed in other Orders of this Office involving the Applicant, are outside the scope of this inquiry, and/or are beyond the scope of my jurisdiction.

IV. DISCUSSION OF ISSUES

1. Is the access request for the Applicant's personal information?

[para 17] The Act only applies to "personal information". "Personal information" is defined in section 1(1)(k) as follows:

1(1)(k) "personal information" means information about an identifiable individual;

[para 18] An individual's right to ask an organization for access to personal information is set out in Part 3 of the Act.

[para 19] Section 24(1)(a) of the Act permits an individual to request an organization to provide them with their own personal information. It states (my emphasis):

24(1) An individual may, in accordance with section 26, request an organization

(a) to provide the individual with access to personal information about the individual, or

...

Review/Complaint form and attachments, and her Request for Inquiry form and attachments, as well as the statements made in her letter dated October 28, 2021, as her initial submission for this inquiry.

¹⁰ Applicant's letter dated September 30, 2018, attached to her Request for Inquiry. See too, the Applicant's letter dated October 11, 2017 attached to her Request for Review/Complaint form.

¹¹ Applicant's letter dated October 11, 2017.

¹² Applicant's letter dated October 11, 2017 and Letter dated October 28, 2021.

[para 20] Section 24(1.1) sets out what an organization must provide to an individual who makes an access request for their own personal information under section 24(1)(a). It states (my emphasis):

24(1.1) Subject to subsections (2) to (4), on the request of an applicant made under subsection (1)(a) and taking into consideration what is reasonable, an organization must provide the applicant with access to the applicant's personal information where that information is contained in a record that is in the custody or under the control of the organization.

[para 21] As noted above, in the Applicant's Request for Review/Complaint form, she stated, in part:

First of all, I believe the information that I want disclosed to the proper organizations (Human Rights Commission, Department of Education, Peace River School Division No. 10 and the OIPC), is actually personal information concerning me. It also concerns the guilty party, [individual A], but if the release of this information would clear my name and validate the truth, then how can the ATA use a privacy law against me, when the principal, [individual A], is guilty of a breach of an agreement, a contravention of a law (violation of a contract) Discrimination, unprofessional conduct and breach of trust and fiduciary duty or a principal under the School Act and breach of privacy under PIPA (File #001153)?

[para 22] In her additional submission, the Applicant provided the following clarification as to what information she had requested from the Organization:¹³

1. The Applicant made a request to access her personal information from the time period of August 2013-August 2017. She especially wanted any Records that were created on August 23, 2013 concerning her meeting with [individual A]. In this search, the Applicant's name should be used to conduct the search for records.
2. In the second block, other records not listed above, the Applicant asked for personal information about the individual, [individual A] without her consent, to be used in an investigation or legal proceeding if it is considered reasonable for the purpose of an investigation and legal proceeding and considering all relevant circumstances including the nature and sensitivity of the information. So, the individual name used to access these Records would be [alternative version of individual A's name]'s name or [individual A]'s name.
3. The Applicant ensured no loopholes about what she was asking could be misinterpreted. She covered both bases so the Commissioner understood the purpose of not limiting the Applicant's access under the Alberta Human Rights Act to defend herself in an investigation regardless if another individual's privacy was breached in the process due to an investigation.

Disclosure without a warrant (TAB 4, Exhibit C)

¹³ Applicant's additional submission dated February 18, 2022.

[para 23] I understand from the Applicant's submissions that the Applicant was meeting with individual A on August 23, 2013 to discuss the Applicant's allegations of individual A's unprofessional conduct and discrimination against the Applicant. I understand that individual A informed the Applicant that individual A had spoken with someone at the ATA prior to individual A's meeting with the Applicant on August 23, 2013. The Applicant also stated that to the Applicant's knowledge, individual A spoke to someone with the ATA after, as well.

[para 24] I understand the Applicant's position to be that since she asked for "Records of [individual A]'s conversation with the ATA about her meeting with [the Applicant] on August 23, 2013 and all information pertaining to her unprofessional conduct against [the Applicant]", the Record of the conversation between individual A and the ATA member located by the Organization contains personal information about the Applicant.

[para 25] I understand the Applicant's position to be that the Record also contains the personal information of individual A, and she also asked the Organization for access to the personal information of individual A contained in the Record.

[para 26] The Applicant also asked for the name of the ATA member that individual A spoke to on or near August 23, 2013.

[para 27] The Applicant has made it clear in her submissions in this inquiry that her access request to the Organization was for both her own personal information and the personal information of individual A, and for the name of the ATA member that individual A spoke to on or near August 23, 2013.

[para 28] Numerous Orders of this Office have confirmed that PIPA only permits an individual to request *their own personal information*, and does not require an organization to provide an individual with anything *other than the individual's own personal information*.

[para 29] For example, in Order P2019-06, at paragraph 12, the adjudicator stated (emphasis in original):

[para 12] PIPA authorizes an applicant to request personal information from an organization; however, it does not authorize an applicant to request anything other than information about the applicant or create a duty in an organization to provide such information to an applicant. Information that may affect an applicant, or information that an applicant may find useful, is not subject to PIPA unless the information in question is also about the applicant. Conceivably, some of the information the Applicant discusses in his most recent letter is about him, but it seems likely that much of it is not. *Moreover, the information the Applicant is now seeking does not form part of the initial access request or his request for review and is not the information the Commissioner referred to inquiry.*

[para 30] Likewise, in Order P2023-01, the adjudicator stated at paragraph 18:

[para 18] Since the access right under PIPA only applies to an applicant's personal information, the Organization has no obligation to provide information that is not the Applicant's personal information . . .

[para 31] In Order P2006-004, former Commissioner Work discussed his jurisdiction over information requests under the Act, and what constitutes “personal information” under the Act. At paragraphs 11, 12 and 18 he stated (emphasis in original):

[para 11] My jurisdiction over information requests under the *Personal Information Protection Act* is limited to access requests for personal information. Sections 24 and 46(1) of the Act combine to confer my jurisdiction. They provide:

24(1) Subject to subsections (2) to (4), on the request of an individual for access to personal information about the individual and taking into consideration what is reasonable, an organization must provide the individual with access to the following:

*(a) **the individual’s personal information** where that information is contained in a record that is in the custody or under the control of the organization;*

*46 An individual who makes a request to an organization **respecting personal information about that individual** may ask the Commissioner to review any decision, act or failure to act of the organization. [emphasis added]*

[para 12] The Act defines “personal information” as “information about an identifiable individual”. In my view, “about” in the context of this phrase is a highly significant restrictive modifier. “About an applicant” is a much narrower idea than “related to an Applicant”. Information that is generated or collected in consequence of a complaint or some other action on the part of or associated with an applicant – and that is therefore connected to them in some way – is not necessarily “about” that person. In this case, only a part of the information that the A/C asked for was information “about” him. Had he relied on PIPA to obtain information, he would not have received much of the information that was made available to him under the *Legal Profession Act* and the Rules created thereunder, or pursuant to the requirements of fairness.

...

[para 18] I do not need to decide for the purpose of this inquiry precisely which parts of the information in the documents collected or created for the purpose of the complaint proceedings were “personal information” of the A/C, as that term is to be understood in PIPA. It is sufficient to say that there is a great deal of information in the documents that is not the A/C’s personal information even though it was generated in consequence of his complaints. The latter includes information about the persons about whom he complained and their dealings with the A/C, information about other third parties and their dealings with the A/C, descriptions of various events and transactions, and correspondence and memos related to the handling of the complaints and other aspects of the complaint process. As well, the fact the A/C was the author of documents does not necessarily mean that the documents so authored were his personal information.

[para 32] There is no provision in Part 3 of the Act, or in any other Part of the Act, which permits an individual to ask an organization for access to anyone else’s personal information, or for any information that is not personal information about the individual.

[para 33] Plainly stated, the Act is clear that the Applicant only has the right under the Act to ask the Organization for access to her own personal information. There is no provision in the Act which permits her to ask for access to individual A’s personal information.

[para 34] This does not mean that an individual cannot request that an organization disclose someone else’s personal information to them; however, such a request would not be made under the Act *and the Act would not apply to the request itself*.¹⁴

[para 35] If an organization receives a request from an individual for access to personal information about another person (a third party), the organization would have to consider section 7(1)(d) of the Act, and the provisions of section 20 of the Act in deciding whether to disclose the third party’s personal information. I will comment on this further when I address the Applicant’s arguments regarding the application of section 20(m) of the Act later below.

[para 36] I now turn to whether the Record contains personal information about the Applicant, as opposed to information simply related to her, and therefore not necessarily “about” her.

2. **Is the information the Organization withheld, or any of it, the Applicant’s personal information under the Act?**
3. **If the Organization refused to provide access to the Applicant’s personal information in its custody or control, did it do so in accordance with section 24(3) (mandatory grounds for refusal)? In particular, did the Organization properly apply section 24(3)(b) of the Act (the information would reveal personal information about another individual) to any of the withheld information?**

[para 37] As these two issues are related, I will consider them together.

[para 38] Section 24(3) states:

24(3) An organization shall not provide access to personal information under subsection (1) if

- (a) the disclosure of the information could reasonably be expected to threaten the life or security of another individual;*
- (b) the information would reveal personal information about another individual;*

¹⁴ As explained later in this Order, if an organization *disclosed* a third party’s personal information to someone other than the third party, the Act would apply to the disclosure of the third party’s personal information.

- (c) *the information would reveal the identity of an individual who has in confidence provided an opinion about another individual and the individual providing the opinion does not consent to disclosure of his or her identity.*

[para 39] Where an applicant has made an access for their own personal information, and the organization determines there is a responsive record which contains the applicant's personal information, but providing the applicant with access to this information would reveal personal information about another individual, section 24(3)(b) requires the organization to withhold the applicant's personal information and the third party's personal information.

[para 40] Section 24(3) is a mandatory provision. Where section 24(3) applies, an organization must withhold the personal information.

[para 41] Both the Applicant and the Organization provided me with extensive submissions for this inquiry, which included an Affidavit from the Applicant, and an Affidavit from the Organization's Information and Records Manager, Privacy Officer and Archivist (the Privacy Officer). I have reviewed all of these materials and considered them, to the extent they are relevant, in reaching my findings herein.

[para 42] The Applicant has said that individual A told the Applicant that individual A spoke with an ATA member *before* individual A's meeting with the Applicant on August 23, 2013. The Applicant further stated that she believed that individual A spoke with an ATA member *after* meeting with the Applicant on August 23, 2013. The Applicant speculated that during this alleged conversation, the ATA member convinced individual A to renege on certain things the Applicant says individual A agreed to do at the meeting the Applicant had with individual A on August 23, 2013.

[para 43] It appears from her submissions that the Applicant is primarily concerned with a record of a conversation which she believes occurred between individual A and an ATA member *after* individual A's meeting with the Applicant on August 23, 2013; however, the time frame she specified in her access request was broad enough to capture any conversations individual A had with an ATA member about individual A's meeting with the Applicant on August 23, 2013, in August 2013 but *before* the August 23, 2013 meeting.

[para 44] In its initial submission, the Organization advised that its Privacy Officer conducted a search of the Organization's membership database for responsive records using individual A's name. The Organization advised that the Privacy Officer did not enter the Applicant's name for the purposes of her search, as the database structure does not support such a search and information is logged under the name of the member receiving advice. The Organization advised that the Privacy Officer located one record.¹⁵

[para 45] The Organization described the Record in its Index of Records as "Advice to Member". The Record is the notes made by an ATA member of a conversation that the ATA member had with individual A. The Record does not contain either individual A's name or the Applicant's name. The Record does contain the ATA member's name.

¹⁵ Organization's initial submission dated January 7, 2022 at paragraphs 4 and 5.

[para 46] The content of the Record is spread out over four pages. I cannot disclose the date of the Record, the ATA member's name, or the content of the notes; however, I can generally describe the Record as follows:

Page 1: Heading and one line of text

Page 2: Heading and one line of text

Page 3: Heading and six lines of text

Page 4: Four Headings with a single entry under each heading

[para 47] As mentioned above, the Applicant relied on her Request for Review (and attachments), and her Request for Inquiry (and attachments), and the submissions contained in her October 28, 2021 letter as her initial submission in this inquiry. She takes the position that the Record contains her personal information.

[para 48] The Organization takes the position that the Record does not contain any personal information about the Applicant. In its initial submission, it made the following arguments in support of its position (footnotes omitted):

20. The type of personal information that is protected under PIPA is defined in s. 1(1)(k) to be "information about an identifiable individual". Personal information under PIPA has been recognized to include information such as a person's name, mailing address, telephone number, drivers' license number or license plate number.

***Barry Lycka Professional Corporation (Re)*, 2008 CanLII 88798 (AB OIPC) (Order P2007-011) at para 36 [TAB 4]**

***Leon's Furniture Ltd. (Re)*, 2008 CanLII 88752 (AB OIPC) (Order P2008-004) at para 12 [TAB 5]**

***Endermologie Centre Corporation (Re)*, 2008 CanLII 88785 (AB OIPC) (Order P2007-006) at para 45 [TAB 6]**

21. In this sense, personal information is information that can be connected to an identifiable individual, even if the identity of the individual is not obvious on the face of that information. As such, when the information at issue is such that it cannot lead to identification of an identifiable individual, it is not personal information:

In this case, removing the Complainant's name and contact information from his complaint would likely mean that the Complainant's opinion would no longer be associated with the Complainant and would therefore not be information about an identifiable individual; i.e. it would not be personal information under the Act.

***Consumer Choice Awards (Re)*, 2014 CanLII 23960 (AB OIPC) (Order P2014-02) at para 24 [TAB 7]**

22. Further, personal information must be information ‘about’ an individual, rather than information merely ‘related to’ an individual:

[PIPA] defines “personal information” as “information about an identifiable individual”. In my view, “about” in the context of this phrase is a highly significant modifier. “About an applicant” is a much narrower idea than “related to an Applicant”. Information that is generated or collected in consequence of a complaint or some other action on the part of or associated with an applicant – and that is therefore connected to them in some way – is not necessarily “about” that person.

***Law Society of Alberta (Re)*, 2006 CanLII 80865 (AB OIPC) (Order P2006-004) at para 12 [TAB 8]**

23. In the case of the Applicant, the information at issue is a Record from the Association’s Database. When [Privacy Officer] reviewed the Record, she determined that it did not contain any of the Applicant’s personal information. This is evident from the fact that [Privacy Officer] located the Record by searching the database using only the name of [individual A] rather than by using the Applicant’s name.

[para 49] I understand the Organization to be arguing that since the Record does not contain the Applicant’s name, she is not identifiable in the Record, and therefore the Record does not contain personal information about the Applicant as an identifiable individual.

[para 50] While there may be cases where the lack of the use of an applicant’s name in a record would make it impossible to ascertain the identity of the applicant, I do not find this to be one of those cases.

[para 51] The Applicant requested records of individual A’s conversation with the ATA about individual A’s meeting with the Applicant on August 23, 2013 and all information pertaining to individual A’s unprofessional conduct against the Applicant. The Organization searched its Database using individual A’s name and located the Record.

[para 52] In the Record, individual A refers to an unnamed person. I cannot disclose what the ATA member recorded individual A as saying; however, from the context of the information in the Record, it is clear that the unnamed person individual A is referring to is the Applicant. I find that the Applicant is identifiable in the Record, despite the fact that her name is not used.

[para 53] I understand the Organization to also be arguing that the information in the Record is only related to the Applicant and not “about” the Applicant and therefore is not the Applicant’s personal information under the Act.

[para 54] In Decision P2011-D-003, former Commissioner Work referred back to his decision in Order P2006-004 and further explained what kind of information was “about” an individual, and therefore subject to the Act, as opposed to simply “related” to an individual, and therefore not subject to the Act.

[para 55] At paragraphs 30 - 31, he stated (my emphasis):

[para 30] In my view, there is likely to be a close parallel between the type of information that is in the “client file” held by the law firm, and the type of information described in the paragraphs just quoted. The fact the file contains information related to one of the Applicants because he was the opposing party in legal matters does not of itself make the information “about him”. What is “about him” is information such as what he has said or expressed as an opinion, the fact he has done certain things or taken certain steps, details of his personal history, and personal details about him such as his name and other associated information such as where he lives or his telephone number. This is not meant to be an exhaustive list, but is provided to illustrate the type of information that is personal information, in contrast to information other than this type of information, that was generated or gathered by the law firm or its client for the purpose of pursuing the litigation. The point is that much or most of the latter may well not be the first Applicant’s personal information even though it relates to a legal matter that involved him. An obvious example would be legal opinions given to the law firm’s client as to how to deal with the litigation with the Applicant or associated legal matters. The way in which the law firm was advising its client and dealing with matters may have affected the Applicants, but it was not “about” them in the sense meant by the definition of personal information in the Act. (This information would also be privileged, but the point here is that much or most of it would likely not be the Applicant’s personal information within the definition of the term contained in the Act.)

[para 31] The same observation applies to information in the file relating to the other Applicant. Only information that is “about” her in this same sense can become the subject of an access request under PIPA.

[para 56] The Record contains the information that individual A provided to the ATA member for the purpose of obtaining the ATA member’s advice, and the advice that the ATA member gave to individual A.

[para 57] The Record contains some information that is solely about individual A. It has a personal dimension to it and is the personal information of individual A. This information must be withheld under section 24(3)(b) of the Act.

[para 58] The Record also contains some information about what the Applicant said or did. For the reasons set forth below, I find that this information is both the personal information of the Applicant and of individual A.

[para 59] The Record contains the concerns of a personal nature of individual A, that individual A sought advice about from the ATA member. In seeking advice, individual A had to provide the issues that she was seeking advice about. These issues included information about what the Applicant said or did. As this information is the source of individual A’s personal concerns, and caused her to seek out the advice, the information is the personal information of both individual A and the Applicant.

[para 60] Disclosing the information about what the Applicant said or did stands to reveal the issues of personal concern to individual A upon which she sought advice from the ATA member.

[para 61] In Order P2007-002, the Director of Adjudication discussed what is to be done in a situation where information is at the same time the personal information of the applicant and that of another person. At paragraph 55 she stated:

[para 55] Where a statement is at the same time the personal information of the Applicant and that of another person, the information of both is inextricably intertwined. Thus, to the extent that the personal information of the Applicant is contained in statements about him made by identifiable individuals, the part of the information that is also personal information of the individuals making the statements must be withheld, on a mandatory basis, under section 24(3)(b).

[para 62] I concur with the Director's conclusion. In this case, the information in the Record that is solely the personal information of individual A, and the information that is both the personal information of individual A and the Applicant, must be withheld under section 24(3)(b).

[para 63] I turn now to consider whether the advice given by the ATA member to individual A is personal information about the Applicant.

[para 64] Following the analysis of former Commissioner Work in Decision P2011-D-003, I find that the advice given by the ATA member to individual A about individual A's personal concerns, is related to the Applicant but is not "about" her and therefore, not the Applicant's personal information under the Act. I find that the advice given by the ATA member to individual A regarding individual A's personal concerns is the personal information of individual A.

[para 65] I turn now to consider whether the Organization is required under the Act to disclose the name of the ATA member where it appears in the Record, to the Applicant.

[para 66] In Order P2012-09, the adjudicator considered whether the names and signatures of individuals acting in their professional capacities was personal information about those individuals, and whether the organization was required to provide the applicant with the names and signatures of individuals acting in their professional capacities. At paragraphs 36, 37 and 43, the adjudicator stated (my emphasis):

[para 36] Adopting the reasoning in Orders P2007-002 and F2001-014, I find that the names of the individuals acting in their professional capacities are not personal information of the individuals that must be severed under section 24(3)(b) of PIPA, nor are their signatures.

[para 37] However, most of the names and signatures acting in their professional capacities are not about the Applicant such that they would be her personal information; in other words, in most cases, the names (and signature) are not responsive to the Applicant's request and need not be disclosed. There are a few exceptions: in my view, the name and signature of the doctors who treated the Applicant provide some information about the Applicant such that they are also her personal information. As I have found that the name and signature of doctors treating the Applicant are not personal information of the doctors, I will order the Organization to disclose that information to the Applicant. The names and signatures of other individuals acting in their professional capacities are not responsive to the Applicant's request and are no longer at issue. The Organization may provide these names to the Applicant at its discretion, but it is not required to under PIPA. Other than the Applicant's own personal information, only the names and signatures of her doctors, her emergency contact person, her family members, and the names of coworkers occurring in records that

have a personal dimension such that the information in the records is the Applicant's personal information (discussed further below) remain at issue.

...

[para 43] Many of the above pages also contain the names of employees acting in their work capacities, as already discussed above (for example, the name of a supervisor or HR employee receiving a complaint). These names need not be withheld under the Act but neither are they the Applicant's personal information and so they are not responsive to the request and need not be provided to the Applicant.

[para 67] Following the adjudicator's analysis in Order P2012-09, as the ATA member was acting in their professional capacity in providing advice to individual A, the ATA member's name would not be considered personal information about the ATA member under the Act; however, the name of the ATA member is also not personal information about the Applicant. Unlike the situation in Order P2012-09, where the name of the doctor *who treated the applicant* provides some information about the applicant such that the doctor's name is also personal information about an applicant, there is nothing about the ATA member's name in this case that provides any information about the Applicant, such that the ATA member's name is also the Applicant's personal information.

[para 68] As I find that the ATA member's name appears in the Record in the context of the ATA member's professional capacity in relation to providing advice to individual A, I find that the ATA member's name is not "personal information" under the Act. I also find that the ATA member's name is not personal information about the Applicant. The Act does not apply to the ATA member's name, and the ATA member's name is not information which the Organization is required to provide the Applicant in response to her access request under the Act.

[para 69] As observed by the adjudicator in Order P2012-09, an organization *may* provide information that is not personal information to an applicant if it wishes to, but it is *not required* to under PIPA. Any decision by an organization to provide or withhold information that is not personal information under PIPA is made outside the scope of the Act and is not subject to review by this Office.

4. If the withheld records contain or consist of personal information of the Applicant, and if section 24(3)(b) applies to these records, is the Organization reasonably able to sever the information to which these sections apply, and provide the personal information of the Applicant, as required by section 24(4)?

[para 70] Section 24(4) states:

24 (4) If an organization is reasonably able to sever the information referred to in subsection (2)(b) or (3)(a), (b) or (c) from a copy of the record that contains personal information about the applicant, the organization must provide the applicant with access to the part of the record containing the personal information after the information referred to in subsection (2)(b) or (3)(a), (b) or (c) has been severed.

[para 71] I have found that there is information in the Record that is both the personal information of individual A and the Applicant. As this information contains personal

information about individual A, section 24(3)(b) applies and requires the Organization to withhold this information.

[para 72] As disclosing the Applicant's personal information stands to reveal personal information about individual A (the personal concerns upon which she sought advice), I find that this information is inextricably intertwined.

[para 73] As a result, I find that the Organization is not reasonably able to sever the information to which section 24(3)(b) applies and provide the personal information of the Applicant to the Applicant under section 24(4).

[para 74] In conclusion, I find that the Act does not require the Organization to disclose the ATA member's name to the Applicant as it is not personal information about the Applicant. I further find that the Organization properly withheld the rest of the information contained in the Record under section 24(3)(b) and could not reasonably sever any of the information from the Record so as to provide the Applicant's personal information to her.

[para 75] The Organization raised additional arguments in its submissions as to why it could not provide the Applicant with her personal information. I find I do not need to address these arguments as I have already concluded that it properly withheld this information under section 24(3)(b).

5. Does section 20(m) in Part 2 of the Act (disclosure without consent where the disclosure of the information is reasonable for investigation or legal proceeding) apply to permit the Organization to disclose third party personal information to the Applicant in response to her access request for her own personal information under section 24(1)(a) in Part 3 of the Act?

[para 76] I understand the Applicant to be arguing that she requires individual A's personal information for investigations or legal proceedings she is involved in (though she provided no information about the current status of any investigations or legal proceedings she is involved in). It appears from her submissions that she is also asking for individual A's personal information to use it to try to have various proceedings which were not decided in her favour, reopened, or to bring new actions against various parties.¹⁶

[para 77] The Applicant argues that section 20(m) permits the Organization to disclose individual A's personal information to her for the purpose of an investigation or legal proceeding and requests that I review the Organization's decision not to disclose individual A's personal information to her pursuant to section 20(m), and order the Organization to disclose individual A's personal information to her.

[para 78] Section 20(m) of the Act states:

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

¹⁶ Applicant's initial submission and additional submission.

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

[para 79] Section 20(m) does in fact allow an organization to disclose a third party's personal information to someone else where it is reasonable for the purposes of an investigation or a legal proceeding; however, as I will explain below, the Act does not give an individual who makes an access request for someone else's personal information the right *to ask* this Office *to review* an organization's decision not to disclose *someone else's personal information* to the individual making the access request for someone else's personal information.

[para 80] As I will explain below, the Act also does not give this Office the power to review an organization's decision *not to disclose* a third party's personal information to an individual who made an access request for the third party's personal information. Nor does this Office have the jurisdiction under section 52(2) of the Act to order an organization to disclose a third party's personal information to an individual who made an access request for the third party's personal information.

[para 81] As I will explain below, the Act also does not give an individual who makes an access request for a third party's personal information the right to make a complaint that the organization refused to disclose the third party's personal information to the individual under section 20(m). Nor does the Act give this Office the power to review a complaint by an individual that an organization refused to disclose a third party's personal information to the individual under section 20(m). This Office also does not have the jurisdiction to make an order under section 52(3) of the Act confirming an organization's decision *not to disclose* a third party's personal information under section 20(m) to an individual who made an access request for the third party's personal information, or to make an order overturning the decision of an organization *not to disclose* a third party's personal information under section 20(m) to an individual who made an access request for a third party's personal information.

[para 82] The Act is divided into different Parts. As mentioned above, Part 3 of the Act deals with access rights under the Act. Section 24, which is found in Part 3 of the Act, sets out how individuals may make access requests and what information they may request, and governs how organizations are to respond to access requests.

[para 83] Section 24 of the Act only permits an individual to request their own personal information.

[para 84] As I have stated above, there is no provision in Part 3 of the Act, or in any other Part of the Act, that permits, or gives an individual the right to ask an organization for *someone else's* personal information.

[para 85] In other words, an individual can request that an organization provide them with access to their own personal information that is in the organization's custody or under its control, but there is no right under the Act for an individual to ask the Organization provide them with

information that is the personal information of someone else – or that is simply not personal information at all.

[para 86] Any request by an individual for *someone else’s personal information*, or for information that is simply not personal information, is not a request to which the Act applies.

[para 87] This does not mean that an individual cannot ask an organization for access to someone else’s personal information, but such a request would be made outside of the Act.

[para 88] Where an organization receives a request outside of the Act by an individual for access to a third party’s personal information, and the organization is considering disclosing the third party’s personal information to the individual who made the request, the organization must consider section 7(1)(d) and section 20 in deciding whether to disclose the third party’s personal information to the individual who requested it.

[para 89] Section 7 and section 20 appear in Part 2 of the Act, which deals with the “Protection of Personal Information”. Part 2 of the Act sets out the rules which govern an organization’s collection, use and disclosure of personal information.

[para 90] Section 7(1)(d) of the Act contains the primary rules for collection, use and disclosure of personal information. With respect to the disclosure of personal information, it 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 91] Section 20 of the Act sets out the circumstances in which an organization may disclose personal information about an individual without their consent. Section 20 is a discretionary section, meaning an organization is permitted to, but does not have to, disclose a third party’s personal information to another person who requested the third party’s personal information.

[para 92] As reproduced above, section 20(m) permits an organization to disclose personal information without an individual’s consent, if “the disclosure of the information is reasonable for the purposes of an investigation or a legal proceeding”.

[para 93] If an organization receives a request from an individual for access to the personal information of someone else on the basis that the individual wants the information for the purposes of an investigation or a legal proceeding, the organization would need to make a determination as to: (a) whether section 20(m) applied and permitted it to disclose the third party’s personal information to the individual; and, if so, (b) whether it would exercise its discretion to disclose the third party’s personal information to the individual.

[para 94] An organization that receives a request from an individual for a third party's personal information, and is considering whether to exercise its discretion to disclose the third party's personal information under section 20(m), should consider the following comments of the adjudicator in Order P2020-05 at paragraph 113:

[para 113] I add that, in my view, any organization faced with a request for personal information under such circumstances would do well to err on the side of caution in the face of uncertainty about whether disclosure is reasonable. Under section 59(1)(a), it is an offence to disclose personal information in contravention of Part 2 of PIPA. Part 2 houses sections 7, 8 and 20 discussed above. Further, under section 60, a cause of action may arise against an organization that has contravened PIPA. Even [if] it were the case that disclosing personal information is reasonable under section 20(m), as noted earlier, authority to disclose information does not amount to a legal obligation to do so.

[para 95] Section 46 of the Act sets out what rights an individual has to ask for a review or initiate a complaint under the Act.

[para 96] Section 46(1) sets out an individual's right to ask for a review by this Office of an organization's decision regarding an access request made by the individual. It states (my emphasis):

46(1) An individual who makes a request to an organization respecting personal information about that individual may ask the Commissioner to review any decision, act or failure to act of the organization.

[para 97] This means that an individual can only ask the Commissioner to review an organization's decision in respect of an individual's access request *for their own personal information*. There is no provision in the Act which permits an individual to request the Commissioner review an organization's decision in respect of an individual's access request *for someone else's personal information*. This was confirmed by former Commissioner Work in Order P2006-004 referred to in paragraph 31 above.

[para 98] As mentioned above, section 20(m) appears in Part 2 of the Act, which sets out the rules for the collection, use and disclosure of personal information by an organization. An individual's right to make a complaint about the collection, use or disclosure of their personal information is set out in section 46(2) of the Act.

[para 99] Section 46(2) states:

46(2) An individual may initiate a complaint with respect to the issues referred to in section 36(2).

[para 100] Section 36(2)(e) states:

36(2) Without limiting subsection (1), the Commissioner may investigate and attempt to resolve complaints that

...

- (e) *personal information has been collected, used or disclosed by an organization in contravention of the Act or in circumstances that are not in compliance with this Act;*

[para 101] Thus, if an organization decided to disclose a third party's personal information to a requestor without the third party's consent, the third party whose personal information had been disclosed without their consent could submit a complaint to this Office under section 46(2) of the Act that their personal information had been disclosed in contravention of the Act, and this Office would have the jurisdiction under section 36(2)(e) of the Act to decide whether the organization contravened the Act by disclosing the third party's personal information. The organization would have to establish that a subsection of section 20 authorized it to disclose the third party's personal information without their consent.

[para 102] Where there has been a disclosure of personal information, section 36(2)(e) allows this Office to investigate a complaint from an individual whose personal information has been disclosed, that the disclosure contravened the Act. It does not allow this Office to investigate a complaint made by an individual who made an access request for a third party's personal information that the organization did not disclose the third party's personal information to them under section 20(m) of the Act.

[para 103] The key point to understand here is that the power of this Office to review a decision by an organization under section 20(m) is only triggered when the organization *has disclosed* personal information under section 20(m). Where there *has been a disclosure*, the individual *whose personal information has been disclosed* can make a complaint to this Office that the disclosure was in contravention of the Act, and this Office can investigate such a complaint.

[para 104] Where, as is the case here, an organization has decided *not* to disclose a third party's personal information to the individual making the access request, there is no provision in the Act which gives the individual making the access request for a third party's personal information the right *to ask* this Office to review or investigate that decision, and no provision in the Act which gives this Office jurisdiction to review or investigate such a decision.

[para 105] Section 52(2) sets out the Commissioner's powers with respect to a decision of an organization under section 24 to give or to refuse to give an individual access to all or part of a record containing personal information about the individual. There is no power under section 52(2) for the Commissioner to order an organization to disclose a third party's personal information to an individual who makes an access request for the third party's personal information.

[para 106] Section 52(3) sets out the Commissioner's powers for any matter other than a matter referred to in subsection (2). Section 52(3) therefore, addresses the Commissioner's order making powers with respect to complaints. Section 52(3)(e) empowers the Commissioner to require an organization to stop collecting, using or disclosing personal information in contravention of this Act or in circumstances that are not in compliance with this Act. Section 52(3)(f) empowers the Commissioner to confirm a decision of an organization to collect, use or

disclose personal information. There is no power under section 52(3) for the Commissioner to make an order *confirming* a decision of an organization *not to* disclose personal information, or to make an order *overturning* a decision of an organization *not to* disclose personal information.

[para 107] Accordingly, as the Commissioner's delegate, I have no power under section 52(2) of the Act to order the Organization to disclose individual A's personal information to the Applicant. Nor do I have the power under section 52(3) of the Act to make an order confirming the Organization's decision not to disclose individual A's personal information to the Applicant under section 20(m) of the Act, or to make an order overturning the Organization's decision not to disclose individual A's personal information to the Applicant under section 20(m) of the Act.

[para 108] In summary:

- there is no provision in the Act which allows the Applicant to request access to anyone's personal information other than her own;
- there is no provision in the Act which allows the Applicant *to request* that this Office review the Organization's decision not to provide her with individual A's personal information;
- there is no provision in the Act which permits me *to review* the Organization's decision, or the reasons for its decision, not to disclose individual A's personal information to the Applicant in response to the Applicant's access request for individual A's personal information;
- there is no provision in section 52(2) of the Act which gives me the power *to order* the Organization to disclose individual A's personal information to the Applicant;
- there is no provision in the Act which allows the Applicant *to make a complaint* that the Organization refused to disclose individual A's personal information to her under section 20(m) in response to her access request for individual A's personal information;
- there is no provision in the Act which permits me *to investigate a complaint* by the Applicant that the Organization did not disclose individual A's personal information to the Applicant under section 20(m) in response to her access request for individual A's personal information, and;
- there is no provision in section 52(3) of the Act which gives me the power *to make an order* confirming the Organization's decision not to disclose individual A's personal information to the Applicant under section 20(m) in response to the Applicant's access request for individual A's personal information, or *to make an order* overturning the Organization's decision not to disclose individual A's personal information to the Applicant under section 20(m) of the Act in response to the Applicant's access request for individual A's personal information.

V. ORDER

[para 109] I make this Order under section 52 of the Act.

[para 110] I find that the ATA member's name is not personal information about the Applicant and the Act does not require the Organization to disclose the ATA member's name to the Applicant.

[para 111] I find that the Organization properly applied section 24(3)(b) to withhold the balance of the information in the Record from the Applicant, and could not reasonably sever any of the information from the Record so as to provide the Applicant's personal information to her.

[para 112] I find that the Act does not give the Applicant the right to request anyone's personal information other than her own.

[para 113] I find that the Applicant's request to the Organization for access to individual A's personal information was made outside of the Act. I find that there is no provision in the Act which allows the Applicant to request that this Office review the Organization's decision not to provide her with individual A's personal information. Further, I find that there is no provision in the Act which permits me to review the Organization's decision, or the reasons for its decision, not to disclose individual A's personal information to the Applicant in response to the Applicant's access request for individual A's personal information.

[para 114] I find that there is no provision in section 52(2) of the Act which gives me the power to order the Organization to disclose individual A's personal information to the Applicant.

[para 115] I find that there is no provision in the Act which allows the Applicant to make a complaint that the Organization refused to disclose individual A's personal information to her under section 20(m) in response to her access request for individual A's personal information. Further, I find that there is no provision in the Act which permits me to investigate a complaint by the Applicant that the Organization did not disclose individual A's personal information to the Applicant under section 20(m) in response to her access request for individual A's personal information.

[para 116] Finally, I find that there is no provision in section 52(3) of the Act which gives me the power to make an order confirming the Organization's decision not to disclose individual A's personal information to the Applicant under section 20(m) in response to the Applicant's access request for individual A's personal information, or to make an order overturning the Organization's decision not to disclose individual A's personal information to the Applicant under section 20(m) of the Act in response to the Applicant's access request for individual A's personal information.

Carmen Mann
Adjudicator