

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER P2023-08

October 13, 2023

WEST FRASER MILLS LTD.

Case File Number 024455

Office URL: www.oipc.ab.ca

Summary: An Applicant made an access request under the *Personal Information Protection Act* (PIPA) to West Fraser Mills Ltd. (the Organization) for information regarding disciplinary actions taken against him, medical documentation, first aid records, and incident reports.

The Organization responded to the Applicant, stating that he had been given access to review his personnel file and that the Organization had nothing more to provide to the Applicant.

The Applicant requested a review of the Organization's response. In his request for review, the Applicant specified that he was seeking the results of a particular investigation report.

The Adjudicator found that the Organization conducted an adequate search for the investigation report.

The Adjudicator found that the Organization failed to respond to the Applicant in accordance with section 29(1) of the Act.

Statutes Cited: AB: *Personal Information Protection Act*, S.A. 2003, c. P-6.5, ss. 1, 27, 29, 52

Authorities Cited: AB: Orders P2006-012, P2009-005

I. BACKGROUND

[para 1] The Applicant was an employee of West Fraser – Hinton Wood Products (the Organization). The Applicant made two access requests to the Organization; the first request was provided on a form intended for making access requests under the *Freedom of Information and Protection of Privacy Act* (FOIP Act). This form, dated July 6, 2021, was sent to the Organization, and requested “information pertaining to any [disciplinary] actions towards [the Applicant] from staff at west fraser including any medical documentation or findings, also first aid records and incidents.”

[para 2] The Applicant made another access request to the Organization on a form intended for making access requests under the *Personal Information Protection Act* (PIPA). This form, dated July 15, 2021, requested any incident and first aid reports.

[para 3] The Organization responded to the Applicant, stating that he had previously been given access to review his personnel file and that the Organization had nothing more to provide to the Applicant.

[para 4] The Applicant requested a review of the Organization’s response. In his request for review, the Applicant specified that he was seeking the results of a particular investigation report. A Senior Information and Privacy Manager was assigned to conduct the review. The Manager made several attempts to contact the Organization for the review, but the Organization did not respond. As a result, the Applicant requested an inquiry. In his request for inquiry, the Applicant again specified that he is seeking an investigation report resulting from a complaint he had made in April 2020.

II. ISSUES

[para 5] The Notice of Inquiry, dated July 27, 2023, states the issues for inquiry as the following:

1. Did the Organization comply with section 27(1)(a) of the Act (duty to assist, including duty to conduct an adequate search for responsive records)?
2. Did the Organization respond to the Applicant in accordance with section 29(1) of the Act (contents of response)?

III. DISCUSSION OF ISSUES

1. Did the Organization comply with section 27(1)(a) of the Act (duty to assist, including duty to conduct an adequate search for responsive records)?

[para 6] Section 27(1)(a) of the Act states the following:

27(1) An organization must

- (a) make every reasonable effort*
 - (i) to assist applicants, and*

(ii) *to respond to each applicant as accurately and completely as reasonably possible,*

...

[para 7] The duty to assist includes conducting an adequate search for responsive records, as well as informing the applicant, in a timely manner, what steps have been taken to search for the requested records (Order P2009-005, at para. 47).

[para 8] The Notice of Inquiry states that this issue relates to whether the Organization conducted an adequate search for records, The Notice directs the Organization to provide its submission in the form of a sworn document describing the search it conducted in response to the Applicant's request. It directs the Organization to consider addressing the following:

- The specific steps taken by the Respondent to identify and locate records responsive to the Applicant's access request.
- The scope of the search conducted, such as physical sites, program areas, specific databases, off-site storage areas, etc.
- The steps taken to identify and locate all possible repositories where there may be records relevant to the access request: keyword searches, records retention and disposition schedules, etc.
- Who did the search? (Note: that person or persons is the best person to provide the direct evidence).
- Why the Respondent believes no more responsive records exist other than what has been found or produced. (In answering this question the Respondent should have regard to the reasons the Applicant gave for believing more records exist than were located/provided to him/her **or** in answering this question the Respondent should have regard to the Applicant's description of the records/kinds or records he/she believes should have been provided to him/her.)
- Any other relevant information.

[para 9] With respect to the burden of proof, an applicant must show some basis that an organization failed to locate or provide a record in its custody or control; the burden then shifts to the organization to show that it conducted an adequate search (Order P2006-012 at para. 12).

[para 10] In his request for inquiry, the Applicant states that he filed a formal harassment complaint against his supervisor, B. He argues that the Organization was required to conduct an investigation into his complaint. The Applicant states that his Workers' Compensation Board (WCB) case manager informed him that only the Applicant and his supervisor were interviewed with respect to the complaint; the Applicant states:

Meaning a proper thorough investigation was never done and they won't show me this investigation on myself to anybody including myself.

[para 11] With its initial submission, the Organization provided an affidavit sworn by the General Manager. The affiant states that the Applicant's complaint that led to the relevant investigation was made on April 22, 2021. The affiant states that J, who was the General

Manager of the Organization at the time, conducted an investigation into the incident in May 2021 but did not prepare an incident report or investigation report.

[para 12] The affiant states that J provided a letter to the Applicant dated May 20, 2021, closing the investigation into the Applicant's complaint. The Organization provided a copy of that letter. The body of that letter read, in its entirety:

On April 22, 2021 you alleged to have been subject to bullying and harassment, and said you would be making written complaint under the Company's bullying, harassment and violence policy.

I have determined, after careful review of all relevant information, including interviews with all parties, your allegations are not bullying or harassment but rather the result of execution of normal supervisory and management responsibilities with the ultimate goal of keeping you safely employed while working for West Fraser.

I consider this matter closed.

[para 13] The affiant states that he prepared a summary of the investigation into the Applicant's complaint on October 25, 2021, in response to an Occupational Health and Safety investigation and a WCB investigation. The affiant further states (at paras. 15-16):

An investigation report is typically completed by the person or persons undertaking any investigation and it is done contemporaneously with the investigation. I did not do the investigation nor was the document I prepared contemporaneous. What is more, it was not a fact-finding document per se and was prepared for specific purposes related to the matters referred to in paragraph 13. I would not typically consider what I prepared to be an "investigation report" or an "incident report" and that is particularly so when it was prepared for in response to legal processes initiated by an employee. It was a summary of the investigation on behalf of Respondent for specific proceedings.

I do not believe that either an "incident report" or an "investigation report" was ever prepared nor do such documents exist. While I prepared an "investigation summary", it did not exist prior to October 26, 2021, some three months after [the Applicant] had submitted his requests to access information and some two months after I had responded to him.

[para 14] With his initial submission, the Applicant provided a copy of an email from a WCB employee to J, dated May 21, 2021, relating to the Applicant's WCB claim. In that email the WCB employee referred to an investigation that had apparently been discussed previously; the WCB employee informed J of the following:

I can't read your investigation and then use it unless a copy of it is placed on the file which you confirmed that HR will not release. But you were going to check back with them to see if you could send copies of the emails.

I suggested that you do a summary of your findings and send it to us or vet names out of it. We also discussed how the investigation only had the worker and the supervisor and no other witnesses were contacted...

[para 15] I understand that the email from the WCB employee to J indicates that an investigation document exists. However, I cannot verify that the relevant investigation referred to in that email is the investigation resulting from the Applicant's complaint. Further, the WCB employee referred to J checking to see if he could send "copies of the emails" to the WCB. This might indicate that the documentation relating to the investigation is not an investigation report, but rather emails. These emails could comprise the interviews that J indicated he had conducted in his letter to the Applicant.

[para 16] From the Organization's submissions, I accept that the Organization did not create an investigation report (or incident report) at the conclusion of its investigation into the Applicant's complaint. It appears that the May 20, 2021 letter from J to the Applicant, closed the matter. Possibly, the Organization determined that the investigation into the complaint did not warrant a report.

[para 17] Given this, there is no reason to find that the Organization failed to conduct an adequate search for the requested record.

[para 18] While the adequacy of the Organization's search in this inquiry is limited to the existence of a particular investigation report, I will also provide additional guidance to the Organization with respect to responding to access requests under PIPA more generally.

[para 19] The Organization states that it provided the Applicant with an opportunity to review his personnel file. However, the Applicant's access requests were not limited to his personnel file. The Applicant's requests were sufficiently broad to encompass the Applicant's personal information in any records in the Organization's custody or control, such as emails, handwritten notes, and other files. Therefore, the Organization's response to the Applicant may not have been a complete response to his access requests. Given the narrow scope of the issue in this inquiry (i.e. whether the Organization conducted an adequate search for a particular incident or investigation report), I make no findings on this point; however, the Organization may consider this when responding to future access requests.

2. Did the Organization respond to the Applicant in accordance with section 29(1) of the Act (contents of response)?

[para 20] Section 29(1) of PIPA states,

29(1) In a response to a request made under section 24(1)(a), the organization must inform the applicant

- (a) as to whether or not the applicant is entitled to or will be given access to all or part of his or her personal information,*
- (b) if the applicant is entitled to or will be given access, when access will be given, and*
- (c) if access to all or part of the applicant's personal information is refused,*

(i) of the reasons for the refusal and the provision of this Act on which the refusal is based,

(ii) of the name of the person who can answer on behalf of the organization the applicant's questions about the refusal, and

(iii) that the applicant may ask for a review under section 46.

[para 21] The General Manager who swore the affidavit provided with the Organization's initial submission states that the Organization provided the Applicant with an opportunity to review his personnel file on July 7, 2021. The affiant further states that in response to the Applicant's access requests, he met with the Applicant on August 6, 2021 and informed the Applicant that he has seen his entire personnel file and that no new documentation had been added since that time.

[para 22] The Applicant provided a letter to him from the current General Manager of the Organization, dated August 23, 2021. That letter addresses a number of matters, including the Applicant's requests for access. With respect to the requests, the letter states "In regards to your personal information request, you have reviewed your personnel file and I have nothing further to show you."

[para 23] The Organization has not indicated that any other response was provided to the Applicant regarding his access requests.

[para 24] The Organization argues that its responses to the Applicant fulfill its obligation under section 29 of the Act. It states (initial submission, at page 3):

The Respondent properly responded to the request. It provided the Applicant with an opportunity to review his entire personnel file which contained all of the personal information requested in his request. The response provided to [the Applicant] was entirely appropriate. There were no documents for which West Fraser was refusing to produce so it did not need to identify any basis for the refusal. The investigation report subject to this Inquiry did not exist until October 26, 2021, some 3 months after the request and some 2 months after the Respondent's response to [the Applicant]. West Fraser did not refuse to disclose this document, it simply did not exist.

[para 25] The Applicant reviewed his personnel file on July 7, 2021, and yet still made an access request under PIPA on July 15, 2021. This indicates that the Applicant was seeking something in addition to viewing his personnel file. Possibly the Applicant was seeking copies of records contained in his personnel file. Possibly the Applicant was seeking access to any of his personal information in the Organization's custody or control that was located somewhere *other than* in his personnel file (such as emails to or from J relating to his complaint). The Organization does not appear to have asked the Applicant for clarification on this point; it simply referred back to the Applicant's viewing of his personnel file that had already occurred.

[para 26] This is not a proper response to an access request under PIPA. Subsequent to the Applicant's July 15, 2021 request, the Organization does appear to have refused access, as nothing was provided to the Applicant. Neither the Organization's verbal response, as described

by the affiant, nor its August 23, 2021 letter to the Applicant referring to his request for personal information, contain the elements required under section 29(1).

[para 27] Given this, I find that the Organization did not respond in accordance with section 29(1). As the Applicant's focus of this inquiry is the existence of a particular investigation report, and as the Applicant now knows why this record was not provided to him, I will not order the Organization to respond properly under section 29. However, I will order the Organization to familiarize its staff with respect to its obligations when responding to an access request under PIPA, as set out in this Order.

IV. ORDER

[para 28] I make this Order under section 52 of the Act.

[para 29] I find that the Organization conducted an adequate search for the record at issue in this inquiry.

[para 30] I find that the Organization did not respond in accordance with section 29 of the Act.

[para 31] I order the Organization to familiarize its staff with respect to its obligations when responding to an access request under PIPA, as set out in this Order.

[para 32] I order the Organization to notify me and the Applicant in writing within fifty days of receiving this Order, that it has complied with it.

Amanda Swanek
Adjudicator