

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER P2024-01

March 25, 2024

UNITED NURSES OF ALBERTA

Case File Number 005663

Office URL: www.oipc.ab.ca

Summary: An individual (the Applicant) made a request to the United Nurses of Alberta (the Organization) for the notes taken by three employees of the Organization during an arbitration involving the Applicant. The Organization refused to provide the Applicant with her personal information contained in the notes under section 24(2)(c) of the *Personal Information Protection Act* (PIPA), on the basis that the information was collected for the purpose of a legal proceeding. The Applicant requested a review of the Organization's decision to withhold the notes.

The Adjudicator confirmed the decision of the Organization to refuse the Applicant access to the Applicant's personal information in the employees' notes under section 24(2)(c) of PIPA.

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

Authorities Cited: **AB:** Orders P2006-004, P2006-005, P2007-002, P2009-005, P2014-01, P2015-05, P2015-10, P2016-03, and P2023-04.

I. BACKGROUND

[para 1] The Applicant was a member of the United Nurses of Alberta (the Union or the Organization).

[para 2] In 2013 and 2014, the Organization filed a series of grievances on behalf of the Applicant against her employer.

[para 3] An arbitration hearing of these grievances occurred from November 24 – 28, 2014.

[para 4] On March 9, 2017, the Applicant sent an email to three employees of the Organization requesting the following information:

Please be advised that I am requesting all arbitration notes from Dec 24-28 2014 from each of you. Please forward via email to myself within one week.

[para 5] On March 10, 2017, the Organization responded to the Applicant via e-mail as follows:

As the Privacy Officer for UNA, I received your request of 9 March 2017 to access [name of one employee]'s notes from the arbitration that took place from December 24-28, 2014. There was no arbitration on those dates and we assume your intent was to request the notes from the November 2014 hearing. Section 24(2)(c) of the Personal Information Protection Act permits UNA to refuse to disclose information that "was collected for an investigation or legal proceeding." The information you requested was collected for a legal proceeding therefore UNA has elected to refuse your request.

[para 6] The Applicant responded to the Organization on March 10, 2017 stating:

Thank you for your response. You are correct the dates were wrong. The correct dates are November 24-28, 2014. This is not a request from me it is a request from the Calgary Police Department via me. Please comply.

[para 7] The Organization responded to the Applicant via e-mail on March 10, 2017, stating "You have UNA's response", to which the Applicant responded on the same date, "I have forwarded your response to the Detective and [Sergeant] who requested it".

[para 8] The Applicant submitted a Request for Review/Complaint Form to this Office, asking the Commissioner to review the Organization's response. The Commissioner authorized a Senior Information and Privacy Manager to investigate and attempt to settle the matter.

[para 9] The Applicant was not satisfied with the outcome of the investigation and requested that the Commissioner conduct an inquiry into the Organization's response. In her Request for Inquiry, the Applicant stated:

I made a request to obtain the records of a formal hearing which occurred in Nov of 2014 with UNA, [Employer] and sole arbitrator [Name]. The proceedings involved information related to a physical assault that occurred against me in the workplace. I am obtaining the information for the Calgary Police at their request.

[para 10] The Commissioner agreed to conduct an inquiry and delegated her authority to conduct it to me.

[para 11] As the Applicant had requested the notes of three employees, and the Organization's response had referred to only one of the employees, I asked the Organization whether it had ever responded to the Applicant's request for the arbitration notes taken by the other two employees present at the arbitration. I asked the Organization to provide me with its response to the Applicant, if it had sent one, and if not, to please inform me why it had not responded.

[para 12] The Organization subsequently wrote to the Applicant and copied me, informing the Applicant that its failure to address the notes of the other two employees in its original response was an oversight. The Organization advised the Applicant that it was refusing to provide the arbitration notes made by these employees under section 24(2)(c), on the basis that the requested information was collected for a legal proceeding.

II. RECORDS AT ISSUE

[para 13] The records at issue are the 253 pages combined of handwritten notes taken by the three employees of the Organization during the arbitration hearing involving the Applicant from November 24 – 28, 2014.

III. ISSUES

[para 14] The Notice for Inquiry states the issues for this inquiry as follows:

ISSUE A: Was the information the Organization withheld, or any of it, the Applicant's personal information?

ISSUE B: If the Organization refused to provide access to the Applicant's personal information in its custody or control, did it properly apply section 24(2)(c) (information collected for an investigation or legal proceeding) to the requested records or parts thereof?

IV. DISCUSSION OF ISSUES

ISSUE A: Was the information the Organization withheld, or any of it, the Applicant's personal information?

[para 15] In her initial submission, the Applicant stated, in part:

...

8. On the morning of October 2, 2013, I was the victim of an assault after being reported as not being staff by a manager at the Tom Baker Cancer Centre . . . I was held down by 3 protective services representatives . . .

...

10. Within approximately 15-30 minutes of being in the emergency department at approximately 10:30hr, I was held down by 5-6 staff members (including protective services) of the emergency room in the Foothills Hospital and injected with medication against my will . . .

...

12. On October 13, 2013 I filed a police report with the Calgary Police Services . . .

...

16. In November of 2014, I was subjected to an Arbitration that occurred on November 24 – 28, 2014 between UNA and [Employer] mainly involving the assault on me from October 2, 2013.¹

...

24. In the summer of 2016, I reported the information regarding the arbitration to Detective [Name]. I met several months later with [Sergeant] [Name] and Detective [Name]. They requested that I obtain the arbitration notes through the privacy commissioner as it would be [un-]redacted. A copy of that email was sent to the OIPC for the inquiry. Detective [Last Name] and [Sergeant] [Last Name] also asked me to release a copy of my medical record from October 2, 2013 for their review to which I signed the release for this date.

25. In 2017, after discussion with the OIPC, I sent a second request for inquiry to Arbitrator [Name], [Employer ([Names of four individuals])] and UNA ([Names of three employees]) under FOIP and PIPA to obtain their notes from the 2014 arbitration. In fact, all parties refused. A copy of these emails were sent to the OIPC along with the requests for the inquiry.

26. That an [un-redacted] copy of the arbitration notes is requested through me by Calgary Police Services for further investigation of an assault.

27. I make these submissions attempting to summarize an extremely complicated case with limited assistance, given that the courts informed me I am entitled to UNA representation; yet UNA does not want to provide information critical to the police investigation.

28. That in fact, the arbitration notes involve a criminal act that occurred against me and as a victim, I should be entitled to the notes to formulate a defense.

29. That in fact, without the access to the [un-redacted] arbitration notes civil/criminal legal proceedings are being obstructed.

...

¹ The arbitration also encompassed events that led up to the incident on October 2, 2013 the Applicant complained about.

Legislation:

...

Personal Information Protection Act:

The *Personal Information Protection Act 2003, s. 20(f: i, ii)* allows an organization to disclose personal information without the person's consent if it is for an investigation, law enforcement or legal proceeding. In fact, under *PIPA 2003, s. 20(m)*, it is considered reasonable to disclose the records without consent if it is for the purposes of an investigation or legal proceeding.

The arbitration records are evidence that the proceedings took place; the people involved; that the physical assault occurred on me; the admission of wrong doing by the employer and or [its] representatives, that a forced document arose from the proceedings and a significant amount of money was deposited into my account after the proceedings. This is a significant amount of information that has been withheld from a police investigation. *PIPA 2003, s. 20(f: ii)* outlines that the documents from the public body should be disclosed from which a law enforcement proceeding may result. I submit the [un-redacted] copy of the arbitration notes/records be released to me to assist in the police investigation.

[para 16] The information withheld by the Organization is the handwritten notes taken at the arbitration by three employees of the Organization.

[para 17] The Applicant did not request just her own personal information where it appeared in the employees' notes; rather, she requested the entirety of the employees' notes. I infer from her submissions that since the arbitration involved her complaints against her employer, she believes that *all* of the information recorded by the employees in their notes is her personal information, and/or that PIPA entitles her to not only her own personal information but the personal information of other people as well. However, as I will explain below, neither of these positions is correct.

[para 18] Section 24(1)(a) of PIPA allows an applicant to request access to his or her own personal information. Section 24(1)(a) of PIPA states:

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

...

[para 19] Numerous prior Orders of this Office have confirmed that under section 24(1)(a) of PIPA, individuals can only make access requests to organizations for personal information about themselves.

[para 20] Individuals cannot make access requests under PIPA for, and have no right under PIPA to receive, personal information about other people. Nor do individuals have a right under PIPA to request information that is simply not personal information.²

[para 21] “Personal information” is defined in section 1(1)(k) of PIPA as “information about an identifiable individual.”

[para 22] As it is only her own personal information in the employees’ notes that the Applicant is permitted under PIPA to request, the first question to be determined in this case is whether any of the information in the employees’ notes withheld by the Organization from the Applicant, is personal information about her.

[para 23] With respect to the question of whether the records requested by the Applicant contained personal information about the Applicant, the Organization stated in its initial submission:

. . . The information relates to the Applicant’s employment and includes reference to behavior during a hospital visit and other medical information. While not all of the information contained in the records would be considered personal information, much of it would be.

The Respondent, the United Nurses of Alberta (hereinafter, UNA) does not dispute some of the information requested contains personal information as defined by the Personal Information Protection Act (hereinafter, PIPA).

[para 24] In addition, the Organization submitted:

The United Nurses of Alberta reserves the right to refuse to disclose 3rd party information and documents that do not contain personal and private information.

[para 25] The content of the notes can generally be classified as follows:

- Questions posed to the individuals testifying at the arbitration (collectively, the Individuals, none of whom is the Applicant),
- Answers to questions provided by the Individuals, which include in some cases:
 - Personal information about the Individual, and/or
 - Information about the workplace, and/or
 - Personal information about other people who are not the Applicant; and/or

² See, for example, Order P2016-03 at paragraph 5, Order P2007-002 at paragraph 27, and Order P2009-005 where the Adjudicator stated at paragraph 30:

[30] Under section 24(1) of PIPA, an individual may request access to “personal information about the individual”. In an inquiry under PIPA, it is important to remember that an organization is required to provide to an applicant only the applicant’s own personal information and that a request for information that is not the applicant’s personal information is not a proper request under PIPA (Order P2007-002 at para 27).

- The Individual’s recollection of events involving the Applicant, some of which involve medical information about the Applicant, and/or
- The Individual’s opinion about the Applicant, and/or
- Decisions or actions taken by the Individual or the Applicant’s employer to deal with issues involving the Applicant.
- Statements, opinions, observations and questions of the employee making the notes about or related to the answers provided by the Individuals, and
- Opening statement notes of an employee.

[para 26] What constitutes “personal information”, and is therefore subject to PIPA, has been explained in a number of Orders of this Office.

[para 27] In Order P2006-004, former Commissioner Work considered whether information generated or collected to address complaints made by an applicant, was the personal information of the applicant. He concluded that information that relates to an individual is not necessarily “about” that person under the definition of “personal information” in section 1(1)(k) of PIPA.

[para 28] At paragraph 12 he stated:

[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 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 part of the information that the [Applicant/Complainant] asked for was information “about” him. Had he relied on PIPA to obtain the 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 29] At paragraph 18 former Commissioner Work reached the following conclusions:

[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 [Applicant/Complainant], 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 [Applicant/Complainant’s] personal information even though it was generated in consequence of his complaints. The latter includes information about the persons whom he complained and their dealings with the [Applicant/Complainant], information about other third parties and their dealings with the [Applicant/Complainant], 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 [Applicant/Complainant] was the author of documents does not necessarily mean that the documents so authored were his personal information.

[para 30] The Organization did not provide an explanation as to how it determined that information was “personal information” within the terms of PIPA. I infer that in determining “while much of the information contained in the records would be considered personal information, much of it would be”, the Organization did not consider the comments of former Commissioner Work in Order P2006-004.

[para 31] In this case, the Applicant is seeking the information collected by the Organization’s employees during the course of the arbitration to determine her complaints against her employer. I find that the reasoning of former Commissioner Work in Order P2006-004 applies here and accordingly, while much of the information in the notes is *related* to the Applicant, it is not *about* her within the meaning of PIPA, and is therefore not her personal information.

[para 32] Additionally, in Order P2007-002, the Director of Adjudication considered whether an opinion given by individual A about individual B was the personal information of A or B, or both. She determined that an opinion can be the personal information of both the giver of the opinion as well as the individual the opinion is about. At paragraph 22, she stated:

[para 22] That the fact a person holds or gives an opinion about another conveys something personal about the maker will not be true for all opinions. In some circumstances, an opinion held by a person may be abstracted from their personal life to such a degree that it does not seem to have the quality of personal information. An example is where the opinion is a professional one – for example, a psychologist’s opinion from interpreting a psychological test that B has a particular personality disorder. However, for situations where the opinion that is held, or the fact it is given, does reflect something personal, and especially something sensitive, about the person making it, it is, in my view, commonly and quite properly regarded as also being information about that person.

[para 33] As well, at paragraph 25 in Order P2007-002, the Director of Adjudication made the following comments about factual statements:

[para 25] A final issue relative to ownership of information is as to statements about the Applicant by others that are statements of fact rather than of opinion. A statement that B was in a particular place at a particular time, that he is a member of a particular profession, or that he is six feet tall, unless its maker is deluded or mistaken, is a statement of fact. In my view, purely factual statements made by one person about matters such as the activities or attributes of another are the personal information of the person about whom they are. However, if the statement reveals something about A, for example, the reason A knows the thing about B - that he was told it, observed it, or had some experience with it – the entire statement may, at the same time, if A is identifiable, also be the personal information of A. Thus, for example, A’s statement that B assaulted him, or gave him a ride home, is the personal information of both of them.

[para 34] In Order P2015-05, the Director of Adjudication considered whether information requested by an applicant, including a request for “the results of the complete and thorough investigation into the assault” the applicant alleged he was the victim of, was the applicant’s personal information.

[para 35] At paragraphs 25 – 37 and 46, the Director of Adjudication stated (footnotes omitted):

[para 25] As well, in Order P2012-04, the Adjudicator found (at para 14) that even though a person was presenting statements about the requestor as though they were factual, because this person was relaying his own interpretation of a state of affairs, the statements were more accurately characterized as his opinion than as purely factual statements.

[para 26] In my view, someone’s version of events or the particular things they observed in a particular situation is their information, though the event may have involved an applicant. Choosing what to recount is implicitly expressing an opinion as what it is important to convey. Some accounts may be more factual than others, for instance where one person is simply recalling, without comment, what another person said. However, in other types of circumstances, while an account of events may contain purely factual items of information about an applicant, much of the account will also consist of opinion or value-laden observations.

[para 27] I have had an opportunity to review the information in the personnel records that the Organization withheld in reliance [on] section 24(2)(a) by reference to litigation privilege. These withheld records consist largely of the Organization’s documented discussions about how to deal with the Applicant’s employment issues and related matters, and observations or related events.

[para 28] Some of these records recount events in which the Applicant was involved and the nature of his involvement – where he was, what he did and said, and so on. On this account, they can be said to contain information about the Applicant which is his personal information.

[para 29] Some of this information is the Applicant’s, but is at the same time the personal information of third parties, for example, where it describes personal feelings other employees have about the Applicant. As will be discussed further below, personal information of the Applicant that is inseparably intertwined with the personal information of third parties is not subject to access under PIPA.

[para 30] Some of the information does not relate to the Applicant at all, such as information describing other employees’ personal plans or activities, or is information about the activities of the Organization.

[para 31] The greatest part of the withheld information consists of discussions about the Applicant and his job-related issues amongst other employees of the Organization whose role it was to deal with these issues, as well as statements of employees who recounted events involving the Applicant. To a large extent, these discussions include ideas or intentions as to how his employment issues should be dealt with. The records also include descriptions of how the Applicant behaved or

reacted in certain situations, that are value-laden in that they reveal the speakers' opinions about the Applicant and the way these persons interpreted events concerning him. (Because the discussions are work-related rather than personal, most of the 'opinion' information in this category does not appear to be – though some of it may be – the personal information of the employees engaged in these discussions and making these statements.)

[para 32] With respect to such information, I agree with the reasoning in the decision of Commissioner Work, cited above, as well as the reasoning of the Adjudicator in Order P2012-04. Insofar as this withheld information consists of the intentions, ideas and opinions of other employees, it does not consist *solely* of the Applicant's personal information, nor does some of it consist of his personal information at all.

[para 33] To illustrate the latter point, X's statement that "I believe we should take steps a, b and c to deal with Y's employment complaint: is not Y's personal information. While the fact Y has made an employment complaint is Y's personal information, the steps X believes should be taken to address it, though related to Y, are not. Ultimately, if the steps are taken and affect Y's position, this may, at that point, be Y's personal information, for example, that Y accepted a new position. However, the intervening considerations or discussions by others about the merits of the complaint and how to resolve it, are not. Most certainly they are not if the suggested steps are never effected. Even if they are, only the way Y's situation is affected by the outcome, and not why and by whom this was effected, is personal information in the sense of being "about Y" within the terms of the Act.

[para 34] Similar considerations apply to notes of some of the meetings in which the Applicant was present. One of the sets of notes withheld by reference to litigation privilege appears to simply record the Applicant's statements about his views and positions, and his observations of events, recorded in what seems to be a non-subjective way, and on this account is his personal information (these notes will be discussed further below at para 46, and paras 85 to 87). However, other notes, even though recording a situation in which the Applicant was present, document positions others were taking and explanations they were giving for decisions that had been made, which is not the Applicant's personal information.

[para 35] In view of the foregoing, much of the information that has been withheld by reference to litigation privilege, though relating to the Applicant, is not the Applicant's "personal information" within the terms of the Act. To the extent this is the case, this type of information is not subject to an access request and the Applicant has no right to have access to it, under PIPA.

[para 36] As to the remaining information in the records withheld in reliance on litigation privilege, insofar as the Applicant's personal information in these records is intertwined with opinion information, as will be discussed further below, it falls within the scope of the mandatory exception in section 24(3)(c) (which requires withholding of the opinion information of someone else). In my view, one or the other of these descriptions applies to most of the information the Organization has withheld in reliance on the "litigation privilege" exception under section 24(2)(a).

[para 37] Some parts of the information, if excised from the context, consist of strictly factual information about the Applicant, such as a recounting of places he was or statements that he made. I will discuss below whether it is reasonable, or not, to require the Organization to sort through the many pages of records to locate, and provide to the Applicant, these minor items of purely factual information.

...

Notes taken in the assault investigation.

[para 46] The notes taken during the investigation into the Applicant's allegations of an assault (already mentioned above at para 34) are of two types: those of an interview with the Applicant himself, and of interviews with others who knew something about the incident. The former is the Applicant's personal information, as it appears to be an unsubjective recording by the employee of what the Applicant said about the incident and the events that led up to it. The latter, for reasons similar to those already given, consist of information of the Applicant intertwined with the opinion information of others, and in some cases, with the personal information of others.

[para 36] In the case before me, the Applicant was not one of the individuals giving the testimony that was recorded by the employees. The information recorded in the employees' notes falls into the second type of information described by the Director of Adjudication in paragraph 46 of Order P2015-05. It consists of personal information about the Applicant intertwined with the opinion information of others, and, in some cases, with the personal information of others.

[para 37] Taking into account the aforementioned Orders setting out what constitutes "personal information" under the Act, I find that much of the information in the notes is related to the Applicant but is not about the Applicant and is therefore not her personal information under PIPA.

[para 38] Further, I find that personal information about the Individuals, or other individuals, recorded in the employees' notes, is not personal information about the Applicant and she is not entitled to request it, or to receive it under PIPA.

[para 39] Additionally, comments, observations and questions that the employee had in relation to the testimony of an Individual, and recorded in their notes, are not the personal information of the Applicant, and she is not entitled to request it, or to receive this information under PIPA.

[para 40] As well, where the employees' notes record questions posed to the Individuals, this is not the personal information of the Applicant.

[para 41] Where the employees' notes record information given by the Individuals about incidents involving the Applicant, the opinions and factual statements made by the Individuals are either the personal information of the Individual making the opinion or

statement and only *related* to the Applicant, and therefore not her personal information, or they are the personal information of *both* the Individual and the Applicant.

[para 42] Where the employees' notes record information given by the Individuals about other individuals and those individuals' opinions and statements, the information that *does not* involve the Applicant is not her personal information and she is not entitled to ask for it or to receive it under PIPA.

[para 43] Where the individuals' opinions and statements, as relayed by the Individual in their testimony and recorded in the employees' notes, refer to the Applicant, they are either the personal information of the individual making the opinion or statement and only *related* to the Applicant, and therefore not her personal information, or they are the personal information of *both* the individual and the Applicant.

[para 44] In some places, there is some minimal amount of information that could be classified as *solely* the personal information of the Applicant.

[para 45] In summary, there is personal information about the Applicant in the employees' notes that is intertwined with the personal information of the Individual providing the testimony and/or the personal information about other individuals referred to by the Individual in their testimony. There is also a small amount of information that is solely the Applicant's personal information under PIPA.

[para 46] As noted at paragraph 29 above, in Order P2006-004, former Commissioner Work stated that:

[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 [Applicant/Complainant], 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 [Applicant/Complainant's] personal information even though it was generated in consequence of his complaints.

[para 47] Likewise in this case, I do not need to decide for the purpose of this inquiry precisely which parts of the employees' notes taken for the purpose of the arbitration proceeding were "personal information" of the Applicant, as that term is to be understood in PIPA. It is sufficient to say that there is a great deal of information in the notes that is not the Applicant's personal information even though it was collected as a consequence of her grievances against her employer.

ISSUE B: If the Organization refused to provide access to the Applicant's personal information in its custody or control, did it properly apply section 24(2)(c) (information collected for an investigation or legal proceeding) to the requested records or parts thereof?

[para 48] In determining whether the Organization properly applied section 24(2)(c) to withhold the Applicant's personal information, it is helpful to keep in mind the purpose of PIPA.

[para 49] At paragraphs 20 and 21 of Order P2014-01, the adjudicator made the following comments regarding the purpose of PIPA:

[para 20] PIPA is dissimilar to the FOIP Act in that it does not create a right of access to a *record*; only to *personal information*. While a purpose of the FOIP Act is to "allow any person a right of access to the records in the custody or control of a public body", the stated purpose of PIPA set out in section 3 is "to govern the collection, use and disclosure of personal information by organizations in a manner that recognizes both the right of an individual to have his or her personal information protected and the need for organizations to collect, use or disclose personal information for purposes that are reasonable."

[para 21] In Order P2006-005, former Commissioner Work commented:

Because a primary purpose of [the FOIP Act] is to provide access to information, access requests are interpreted broadly. In contrast, [PIPA] is intended to protect personal information and to govern the purposes for which an organization may collect, use and disclose personal information. Access requests under [PIPA] are therefore not given a broad interpretation as they are under [the FOIP Act], since the right to make an access request under [PIPA] is intended only to enable an individual to determine whether his or her personal information is being collected, used and disclosed by an organization in accordance with [PIPA]. [PIPA] does not authorize an individual to request information other than the individual's own personal information.

[para 50] In this case, the Applicant's purpose in seeking access to the employees' notes is not to determine whether her personal information has been collected, used, or disclosed by the Organization in accordance with PIPA; rather, according to her initial submission, it is to give it to the Calgary Police Service (CPS) to "assist the police investigation" into the assault she alleges occurred against her.

[para 51] As noted in paragraph 18 above, pursuant to section 24(1)(a) of PIPA, the Applicant is only entitled to request access to her own personal information in the notes.

[para 52] Section 24(1.1) sets out an organization's obligations when it receives an access request from an individual 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 53] Section 24(2) sets out situations where an organization may refuse to provide an applicant with their personal information.

[para 54] In this case, the Organization has withheld the Applicant’s personal information under section 24(2)(c) on the basis that it was collected for the purpose of a legal proceeding. Section 24(2)(c) states:

24(2) An organization may refuse to provide access to personal information under subsection (1) if

...

(c) the information was collected for the purpose of an investigation or legal proceeding;

...

[para 55] “Legal proceeding” is defined in section 1(1)(g) as follows:

1(1) In this Act,

...

(g) “legal proceeding” means a civil, criminal or administrative proceeding that is related to

(i) a breach of an agreement,

(ii) a contravention of an enactment of Alberta or Canada or of another province of Canada, or

(iii) a remedy available at law;

...

[para 56] In Order P2015-05, the Director of Adjudication considered whether the notes taken about an alleged assault against the applicant in that case had been properly withheld by the organization under section 24(2)(c) on the basis that they were collected for the purpose of an investigation. At paragraphs 83 – 89, the Director of Adjudication stated (my emphasis):

[para 83] In reliance on this provision, the Organization withheld handwritten notes in which it was investigating the Applicant’s allegations that he was physically assaulted by an employee of the Organization (“the incident”). (See Tab 9 of the Records in P2210/P2418.)

[para 84] The notes were taken during an interview of the Applicant himself, as well as during interviews with other employees as to what occurred during the incident by reference to this provision. I have reviewed these records.

[para 85] With respect to the notes of the interview an Organization employee held with the Applicant himself, as discussed above, as it appears to be an unsubjective recording by the employee of what the Applicant said about the incident and the events that led up to it, this is the Applicant's personal information.

[para 86] I believe the notes of the interview with the Applicant fall within the terms of section 24(2)(c). An assault, if it occurred, would be a contravention of the *Criminal Code of Canada*. Given the allegations, it was reasonable for the Organization to conduct an investigation into the matter. Therefore, I find that the notes of the incident as recounted by the Applicant fall within the terms of section 24(2)(c).

[para 87] However, the Organization has not told me why it exercised its discretion against disclosing to the Applicant notes that were made of what appears to be primarily his own account of the incident. I will therefore ask the Organization to exercise its discretion about this question, taking into account that the notes do not seem to contain much or any information other than what the Applicant had himself supplied, and it is therefore not clear what objective is served by withholding it.

[para 88] With respect to the interview notes about the incident with persons other than the Applicant, as was the case with records withheld under section 24(2)(a), I do not believe any part of these records (other than minor, insignificant 'snippets') consists solely of the Applicant's personal information. Rather, such information is intertwined with the opinion information of identifiable others. Some of it does not consist of the Applicant's personal information at all. For these reasons, section 24(3)(c) (a mandatory exception) applies to as much of this information as is the Applicant's personal information. It is therefore not strictly necessary for me to consider whether section 24(2)(c) was properly applied.

[para 89] Nevertheless, given an investigation into the incident was being conducted, I believe section 24(2)(c) is also applicable to the information in the notes of third party interviews that are about the Applicant (and any minor 'snippets' that might be solely his personal information). In saying this, I note again that the provision is a discretionary one, and the Organization has not told me what factors it took into account in exercising its discretion. However, the fact it also withheld this information by reference to section 24(2)(d) shows that it held the view that disclosing information of this nature could have a chilling effect on the provision of such information for future investigations. Thus I accept the Organization properly applied this provision to the interview notes with third parties.

[para 57] In this case, the Organization has submitted that it withheld the information under section 24(2)(c) on the basis that it was collected as part of an arbitration, and an arbitration is a legal proceeding under PIPA. As noted above, none of the individuals whose testimony was in the employees' notes, was the Applicant.

[para 58] In its initial submission, the Organization stated:

The Respondent exercised its discretion to refuse to provide access to the Applicant's personal information because the documents were collected as part of

an arbitration. The OIPC has previously confirmed that an Arbitration is a “legal proceeding” for the purposes of section 24(2)(c) of PIPA. OIPC Order P2015-10 (Attachment 7) states at para 26,

The Applicant’s grievance concerned an alleged breach of a collective agreement by his employer; an arbitration concerning a possible breach of a collective agreement meets the definition of “legal proceeding” in the Act.

The OIPC’s previous order related to activities done in contemplation of an arbitration. In the present case, the Arbitration had begun and the notes were taken during the conduct of the arbitration. Those notes would be used for a variety of purposes including but not limited to cross-examination and re-direct of witnesses, final arguments and making or responding to potential appeals.

[para 59] I have concluded that much of the information in the employees’ notes is only related to the Applicant and not about her, and therefore not her personal information under PIPA. I have concluded that the notes also contain the Applicant’s personal information intertwined with the personal information of the Individual giving testimony and/or the personal information of other individuals referred to in the Individual’s testimony. Additionally, I have found that there is at least a small amount of information that is solely personal information about the Applicant.

[para 60] I agree with the conclusion of the adjudicator in Order P2015-10, cited by the Organization, that an arbitration is a legal proceeding within the meaning of PIPA.

[para 61] I find that the personal information of the Individuals, the personal information of other individuals referred to by the Individuals, all of whom are identifiable in the employees’ notes, and the personal information of the Applicant contained in the employees’ notes was collected for the purpose of the arbitration and is subject to section 24(2)(c). I find that where the personal information is both the personal information of the Individual and other individuals and the Applicant, in various permutations, this information was also collected for the purpose of the arbitration and is subject to section 24(2)(c).

[para 62] I note that even if some of the information I have determined is *related* to the Applicant, but not *about* her, and therefore not her personal information under PIPA, could instead be viewed as *about* her, and therefore her personal information, the information was still collected for the purpose of the arbitration and is subject to section 24(2)(c).

[para 63] Section 24(4) provides that 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 64] Section 24(2)(c) is not one of the subsections listed in section 24(4) and the severing requirement set out in section 24(4) does not apply to information withheld under section 24(2)(c).³

[para 65] Furthermore, I note that the Applicant already knows her own personal information that was disclosed by the Individuals in the arbitration hearing as she was there. Even if the Organization was required by section 24(4) of PIPA (which it is not) to sever out and provide the Applicant with her own personal information that appears in the employees' notes, the information is unlikely to add anything more than what she herself has told CPS about the alleged assault.

[para 66] Section 24(2)(c) is a discretionary section meaning the Organization may decide to withhold or release the Applicant's personal information, provided releasing it is not prohibited under section 24(3) of PIPA.

[para 67] The Organization's exercise of discretion is reviewable by this Office. Where an inquiry relates 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, section 52(2)(a)(ii) states that the Commissioner may "either confirm the decision of the organization or require the organization to reconsider its decision as to whether to give access to all or part of the record containing personal information . . .".

[para 68] In other words, if I find that the Organization exercised its discretion reasonably in refusing to provide the Applicant with her personal information under PIPA, then I, as the Commissioner's delegate, am to confirm the Organization's decision. If I find that the Organization did not exercise its discretion reasonably, I do not have the authority under PIPA to order the Organization to disclose the Applicant's personal information (or anyone else's personal information) to her. Rather, section 52(2)(a)(ii) of PIPA requires me to order the Organization to reconsider its decision as to whether to give the Applicant access to all or part of the record containing her personal information.

[para 69] To reiterate, PIPA does not confer on me the authority to order the Organization to disclose the Applicant's personal information to her if I find it has not exercised its discretion reasonably. I can only order the Organization to reconsider its decision.

[para 70] Unlike the situation before the Director of Adjudication in Order P2015-05, in this case the Organization has told me why it exercised its discretion against disclosing to the Applicant the Applicant's personal information contained in the employees' notes from the arbitration.

³ This has been confirmed by the Director of Adjudication in Order P2015-05 at paragraphs 96 and 97.

[para 71] In its initial submission, the Organization identified three factors it considered and weighed in determining whether to disclose or withhold the Applicant's personal information to her in the employees' notes:

1. The Applicant engaged in behaviours over the past 5 years that undermine the Union's trust of the Applicant,
2. The [refusal to disclose] is not obstructing a criminal investigation, as suggested by the Applicant, and
3. The Applicant had the ability to take notes during the arbitration hearing.

[para 72] With respect to the first factor, the Organization made the following submission:

Assessment of Trustworthiness

The following is a summary of legal proceedings involving the Applicant and Respondent:

- United Nurses of Alberta made 18 grievances on behalf of the Applicant (Attachment 9)
- United Nurses of Alberta commenced an arbitration hearing in November 2014. After the first week of the hearing, the parties agreed to have Arbitrator [Name] adjourn the hearing to discuss settlement.
- United Nurses reached a Settlement with [Employer] on 5 January 2015 to settle 18 files (not provided due to confidentiality)
- Arbitrator [Name] heard evidence on 3 March 2015 regarding alleged breaches of the negotiated settlement agreement by the Applicant. The Applicant chose to proceed self-represented with limited input from United Nurses of Alberta Director of Labour Relations, [Name]. Arbitrator [Name] issued a decision on 19 March 2015. (Attachment 6)
- [Employer] grieved on 19 February 2015 alleging a further violation of the Settlement Agreement by the Applicant. Arbitrator [Name] issued a written direction to the parties on 9 April 2015. (Attachment 10)
- [Employer] filed 4 additional grievances alleging additional violations of the Settlement Agreement. The parties held an arbitration hearing with Arbitrator [Name] on 22 June 2015. Arbitrator [Name] issued a decision on 20 July 2015. (Attachment 11)
- The Applicant made a complaint to the Law Society of Alberta against former United Nurses of Alberta Labour Relations Officer, [Name], on 21 July 2015. (Attachment 12) [Name], Complaints Resolution Officer/Legal Counsel, Conduct, wrote to the parties on 27 November 2015 with the assessment the alleged conduct is not considered deserving of sanction. (Attachment 12) The Applicant did not accept this assessment and wrote to the Law Society of Alberta on 18 December 2015. (Attachment 12) After [name of former United Nurses of Alberta Labour Relations Officer] provided additional information, the Law Society of Alberta wrote to the Applicant and [name of former United Nurses of Alberta Labour Relations Officer] on

30 November 2016 and advised the Complaint was dismissed. (Attachment 12)

- [Employer] filed 3 additional grievances in July 2015. The parties held an arbitration hearing with Arbitrator [Name] on 14 January 2016. Arbitrator [Name] issued a decision on 21 March 2016. (Attachment 13)
- On 13 January 2016, the Applicant brought a motion to quash the settlement document and strike any restraining orders obtained by [Employer] against the Applicant. UNA was not named in the motion; [Employer] counsel brought the application to the attention of UNA, and took the position that UNA was properly a party for the part of the application concerning the settlement, since UNA was a party to the settlement. UNA participated in the chambers application on 19 January 2016, with leave of the Court. The application was dismissed by the Court of Queen's Bench on 19 January 2016. The Applicant filed a Civil Notice of Appeal of the 19 January 2016 Decision, and the Court of Appeal dismissed the application on 13 January 2017. The Applicant brought a statement of claim against [Employer] on 12 February 2016. [Employer] named UNA as a third party defendant in the claim on 8 March 2016. The statement of claim and the third party claim were dismissed in chambers on 11 April 2017 (Attachment 14)
- The Applicant made a complaint to the Alberta Labour Relations Board alleging the Respondent failed to discharge its duty of fair representation to the Applicant. On 8 July 2016 the Board issued a decision dismissing the complaint. (Attachment 15)

...

As is clearly evident from the history of legal proceedings with the Applicant, the Respondent has a lengthy and extensive history with the Applicant. The Respondent has considered several arbitration decisions where the Applicant breached a settlement agreement. The Respondent's relationship with the Applicant is characterized by litigation of similar or identical issues in multiple venues. The Applicant's behavior throughout the past 5 years undermines the UNA's trust of the Applicant. This assessment of the Applicant's trustworthiness is a valid consideration in the Respondent's exercise of its discretion.

[para 73] I interpret the Organization's submission that the Applicant is "untrustworthy" to mean that it is concerned that if it discloses her own personal information to her as it appears in the employees' notes, she will use it to bring further actions or proceedings, or make further complaints wherever possible. Such a concern is not unfounded since the Applicant has specifically stated that her purpose for requesting access to all of the employees' notes (not just her own personal information where it appears in the notes) is to provide the notes to the CPS to aid it in its investigation into her allegations of assault.

[para 74] However, I find that it is not necessary for me to determine whether the Applicant's conduct makes her "untrustworthy" and if so, whether this is a relevant factor

to consider in deciding to deny her access to her own personal information under PIPA, since there are other factors which provide a reasonable basis for the Organization to withhold the Applicant's personal information in the notes from her.

[para 75] The Organization also considered the Applicant's argument that the employees' notes were required for the investigation by the CPS into her allegations of assault, and that by refusing to provide all of the employees' notes to her, the Organization was obstructing the police investigation.

[para 76] The Organization submitted:

Exercise of Discretion Does Not Obstruct a Criminal Investigation

The caselaw requires the Respondent to consider relevant factors when exercising its discretion to refuse to disclose information. We have considered the Applicant's purpose for making a request. Based on the Applicant's submission (Attachment 5) we understand the purpose of the request is to provide information to Calgary Police Services as part of an investigation of assault. Specifically, at para 26, the Applicant states the arbitration notes are requested "through me by Calgary Police Services for further investigation of an assault." The Applicant goes on to say at para 28 the "arbitration notes involve a criminal act that occurred against me and as a victim, I should be entitled to the notes to formulate a defense." We note, as the victim of the assault, the Applicant would not "formulate a defense." Also, generally speaking, notes of discussions are not preferred evidence in court proceedings. Rather the court prefers first-hand accounts and notes are only used to refresh a witness's memory where necessary. Also, the notes in question are hearsay with respect to the assault and at most document a possible admission to the reported crime.

Finally, at para 29 of the Applicant's submission states, "That in fact, without access to the [un-redacted] arbitration notes civil/criminal legal proceedings are being obstructed." The Respondent has not received any order or any communication from the Police or the Criminal Court system indicating that we must disclose information as part of a Criminal proceeding. The Respondent's understanding is the Calgary Police Service could press charges based on the Applicant's statement of events. The Respondent is not responsible for the Calgary Police Service's decision. The Respondent is satisfied its actions are not obstructing a criminal investigation. If we receive an order that creates an obligation to disclose under PIPA then we will reconsider our decision at that time.

[para 77] In her email to the Manager Labour Relations – Provincial Office (the Manager) for the Organization on March 10, 2017, responding to the Organization's refusal to disclose the employees' notes pursuant to section 24(2)(c), the Applicant stated:

This is not a request from me it is a request from the Calgary Police Department via me. Please comply.

[para 78] The Manager responded “You have UNA’s response”, to which the Applicant replied “I have forwarded your response to the Detective and [Sergeant] who requested it”.⁴

[para 79] There is nothing in the information before me that indicates the CPS took any action, including making its own request to the Organization for the employees’ notes, with respect to the Applicant’s allegation of assault after receiving the Applicant’s forwarded email from the Organization on March 10, 2017. This is an observation only and not an opinion that the CPS should have taken any action, as it is outside my jurisdiction to determine or direct what the CPS should do, or should have done with respect to the Applicant’s allegations.

[para 80] The Applicant makes the same representation that it is the CPS who is making the request, and she is acting on its behalf, or that the request is being made by the CPS through her, in various other documents before me in this inquiry.

[para 81] There is no document or information before me in which the CPS appoints the Applicant to act as its agent, or to make an access request on its behalf to the Organization under PIPA. There is also no document or information before me in which the CPS instructs the Applicant to make an access request under PIPA for the employees’ notes, or even just for her own personal information.

[para 82] Moreover, it would make no sense for the CPS to ask the Applicant to make an access request for the employees’ notes under PIPA *on its behalf* since there is no provision in PIPA which permits public bodies, such as the CPS, to make access requests for personal information under PIPA.

[para 83] The CPS cannot therefore ask a citizen to make an access request to an organization *on its behalf* for the citizen’s own personal information or for anyone else’s personal information under PIPA.

[para 84] In my view, it is more likely that the CPS may have verbally informed or possibly suggested to the Applicant that she could request her own personal information in the employees’ notes from the Organization as she is entitled to do under PIPA, and the Applicant may have misinterpreted this to mean that she should, or was directed to, or asked by the CPS to make an access request for the entirety of the notes *on behalf of* the CPS.

[para 85] PIPA only permits an *individual* to make access requests under the Act, and only permits *an individual* to request access *to their own personal information*. As discussed above, not all information an individual requests is an individual’s personal information under PIPA.

[para 86] This is not to say that public bodies cannot make a request for access to personal information in the custody or under a control of an organization, or that

⁴ Email from Applicant to Manager dated March 10, 2017.

individuals cannot ask an organization for access to the personal information of someone else.

[para 87] However, as I explained in Order P2023-04 at paragraphs 76 - 108, such a request is not made under PIPA, and there is no provision in PIPA which permits the requestor *to ask* the Commissioner to review a decision by an organization to deny access to the requested third party personal information, or which gives the Commissioner the authority *to review* a decision by an organization to refuse to disclose the third party's personal information. Further, there is no provision in PIPA which gives the Commissioner the power to order an organization to disclose a third party's personal information to someone other than the third party.

[para 88] In the case at hand, the Applicant asserted that sections 20(f)(i) and (ii), as well as section 20(m), permitted or required the Organization to disclose the employees' notes to her. These sections state:

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:

...

(f) *the disclosure of the information is to a public body or a law enforcement agency in Canada to assist in an investigation*

(i) *undertaken with a view to a law enforcement proceeding, or*

(ii) *from which a law enforcement proceeding is likely to result;*

...

(m) *the disclosure of the information is reasonable for the purpose of an investigation or legal proceeding.*

...

[para 89] In Order P2023-04 at paragraphs 76 - 108, I explained how access requests can only be made by an individual, and only for an individual's personal information. I explained that where an organization receives an access request from an individual (the requestor) for someone else's (the third party) personal information, the request is made *outside* of PIPA, and PIPA does not apply *unless* the organization decides to disclose the third party's personal information to the requestor. PIPA only permits an organization to disclose a third party's information to a requestor with the consent of the third party, or where one or more of the provisions in section 20 apply.

[para 90] If the organization decides *not* to disclose the third party's personal information to the requestor, there is no right in PIPA for the requestor *to ask* that the Commissioner review that decision, and there is no authority in PIPA for the

Commissioner *to review* that decision. Furthermore, there is no authority in PIPA for the Commissioner to order an organization to disclose a third party's personal information to someone other than the third party.

[para 91] If the organization decides to disclose the third party's personal information to the requestor without the third party's consent, the third party can make a complaint to the Commissioner under PIPA that the organization disclosed their personal information without their consent in contravention of PIPA. In order not to be found in contravention of PIPA, the organization would need to establish that one or more of the provisions of section 20 applied and it relied on that provision or provisions to permit it to disclose the third party's personal information without their consent to the requestor.

[para 92] The same is true where a public body makes an access request to an organization for someone's personal information.

[para 93] In this case, the Applicant sought access to all of the information in the employees' notes. The employees' notes included some information that is not personal information at all, and is not subject to PIPA, personal information solely about the Individuals and personal information solely about other individuals referred to by the Individuals in their testimony, personal information that was both the personal information of the Individuals and the Applicant, personal information that was both the personal information of the individuals referred to in the testimony of the Individuals and the Applicant, as well as a small amount of information that was solely the Applicant's own personal information.

[para 94] The Organization correctly determined that section 24(2)(c) applied to the Applicant's personal information both where it appeared solely, and where it was intertwined with the personal information of other Individuals and/or the personal information of other individuals referred to in the Individuals' testimony, and recorded in the employees' notes. For the reasons explained above, sections 20(f) and (m) do not apply to the Applicant's access request *for her own* personal information.

[para 95] The Applicant's request for access to the personal information of the Individuals and other individuals in the employees' notes is made outside of PIPA. The Act does not give the Applicant the right *to ask* the Commissioner to review the Organization's decision not to give her someone else's personal information, and it does not give the Commissioner the right to review the Organization's decision. Nor does PIPA give the Commissioner, or me as her delegate, the authority to order the Organization to disclose the personal information of the Individuals and the other individuals in the employees' notes, to the Applicant.

[para 96] If the CPS were to ask the Organization to provide the employees' notes to it (which would be a request made outside of PIPA), the Organization would need to consider the requirements of PIPA and either obtain the consent of the individuals whose personal information appears in the notes, or satisfy itself that one or more provisions of

section 20, which authorizes disclosure without consent, are met, before it disclosed the personal information contained in the employees' notes to the CPS.

[para 97] Finally, the Organization submitted that in deciding whether to give the Applicant access to her own personal information, it considered that the Applicant was permitted to take notes during the arbitration hearing. The Organization submitted:

It was not the exclusive right or obligation of the UNA attendees to take notes during the arbitration hearing. The Applicant chose not to take notes.

[para 98] The fact that the Applicant could have taken her own notes during the arbitration, while a factor to consider, does not decisively establish on its own that the Organization exercised its discretionary reasonably in withholding the Applicant's personal information in the employees' notes from her.

[para 99] In my view the Organization exercised its discretion reasonably in withholding the Applicant's personal information from her because she is only entitled under PIPA to her own personal information where it appears in the employees' notes. As I have said, there is only a small amount of information in the employees' notes that is *solely* about the Applicant.

[para 100] This does not appear to be the information the Applicant is interested in. She already knows her own personal information and the personal information in the employees' notes that is solely about her would not likely add anything to what she has already told the CPS about the alleged assault.

[para 101] Moreover, under section 24(1.1), reproduced herein, the Organization is permitted to take into account what is reasonable in responding to an access request, and in this case it would not be reasonable for the Organization to have to go through 253 combined pages of the employees' notes and redact everything except the small amounts of the Applicant's personal information that are not intertwined with the personal information of other individuals, like her name for example, where it appears, and provide this to the Applicant when it is clear that this is not what the Applicant is seeking.

[para 102] Based on her submissions, the information in the employees' notes that the Applicant is interested in, is the information about what the Individuals saw, did, or heard about from other individuals in relation to the matters she complained about. She believes this information will help her establish her allegations. However, as I have explained, the information she seeks is either information that is only related to, and not about her, and therefore not her personal information under PIPA, or information that is both her personal information and the personal information of others.

[para 103] As I have stated previously, section 24(4) does not apply to information withheld under section 24(2)(c) and consequently, where information appears that is both the personal information of the Applicant and the personal information of other people, the Organization is not required under PIPA to sever out the personal information of other

individuals and provide the Applicant with her personal information, even if it could reasonably do so.

[para 104] Given the above, I find the Organization exercised its discretion reasonably in deciding to withhold the Applicant's personal information where it appears in the employees' notes, from her under section 24(2)(c).

[para 105] As I have found that section 24(2)(c) applies to the personal information in the employees' notes, and the Organization exercised its discretion reasonably in withholding the Applicant's personal information, it is not necessary for me to consider whether the information could be withheld under any other provision set out in section 24(2) or section 24(3).

[para 106] However, as I have found that the employees' notes contain information that is both the personal information of an Individual and the Applicant, as well as information that is both the personal information of the Applicant and of other individuals referred to in the Individuals' testimony and recorded in the employees' notes, I will also comment on the application of section 24(3)(b) of PIPA to this information, since this is a mandatory section.

[para 107] Section 24(3) sets out the circumstances in which an organization has no choice, and must refuse to provide an individual with their own personal information. Section 24(3)(b) states:

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

...

(b) the information would reveal personal information about another individual;

...

[para 108] Section 24(3)(b) applies to the information that is both the personal information of an Individual and the Applicant, as well as information that is both the personal information of the Applicant and of other individuals referred to in the testimony of the Individuals', and recorded in the employees' notes.

[para 109] Section 24(4), reproduced herein, applies to information that is subject to section 24(3)(b). I find that the personal information that is both an Individual's personal information and the Applicant's personal information is inextricably intertwined and cannot reasonably be severed by the Organization under section 24(4).

[para 110] I find that the personal information that is both the personal information of an individual referred to in the testimony of an Individual, and the

personal information of the Applicant, is inextricably intertwined and cannot reasonably severed by the Organization under section 24(4).

Additional Allegations/Complaints by the Applicant

[para 111] In her rebuttal submission, the Applicant advised that she received a parcel pick up notice from the local Calgary post office the evening of July 3, 2019 and picked it up the morning of July 4th, 2019. The parcel contained the Organization's initial submission. The Applicant objects to the Organization's submission on the basis that:

- the Organization failed to provide her with its initial submission by the due date set out in the Notice of Inquiry of June 28, 2019;
- there was no date on the submission;
- there was no contact information on the submission;
- the submission was not signed; and
- the submission was not notarized.

[para 112] It appears that the Applicant wants me to reject or disregard the Organization's submission for the above stated reasons.

[para 113] In its rebuttal submission, the Organization stated:

1. The submissions were hand-delivered to the Privacy Commissioner's office prior to the expiry of the deadline. Likewise, the Complainant's copies were mailed out on that date.

[para 114] The Organization's submission was received by this Office on June 28, 2019. The fact that it was delivered to this Office on the deadline and posted to the Applicant on June 28, 2019 is sufficient to comply with the Notice. If the Applicant required additional time to prepare her rebuttal due to the slight delay in receiving the Organization's initial submission, she could have made such a request to me. She did not. The Applicant was not prejudiced in any way by receiving the Organization's submission less than a week (which included a weekend and Canada Day) after it was due.

[para 115] Furthermore, while it is helpful for parties to date their submissions, there is no *requirement* that an organization date its submission. It is logged by this Office when it is received no matter what date is on the submission. Likewise, while it is helpful if an organization has a representative sign its submission, there is no *requirement* for a signature or contact information to be included. Furthermore, there is no requirement that an organization's submission be notarized. Moreover, the submission was on the Organization's letterhead, and the Notice of Inquiry set out the Organization's contact information for the purpose of this inquiry. The Applicant's complaints do not amount to a fatal defect in the Organization's submission that would render it invalid.

[para 116] There is no merit in these complaints that would support, or require me to reject or disregard the Organization's initial submission and I decline to do so.

[para 117] The Applicant further alleged in her rebuttal submission that the Organization had an obligation to report the alleged assault to the CPS.

[para 118] In its rebuttal submission the Organization stated:

2. UNA did not witness the alleged criminal conduct described by the Complainant. The notes requested relate to how a witness to an arbitration described events at the hospital. That is the extent of our involvement with the original incident. We disagree with the Complainant's assessment of our obligation to report the incident to the Police.

[para 119] I have no authority to make a decision as to whether the Organization should have reported the incident the Applicant complains about to the CPS or not. My authority is limited to determining whether the Organization properly withheld the personal information of the Applicant contained in the employees' notes under PIPA.

V. ORDER

[para 120] I make this Order under section 52 of PIPA.

[para 121] I confirm the decision of the Organization to refuse the Applicant access to her personal information where it appears in the employees' notes under section 24(2)(c) of PIPA.

Carmen Mann
Adjudicator
/kh