

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER P2024-02

March 28, 2024

UNITED NURSES OF ALBERTA

Case File Number 025125

Office URL: www.oipc.ab.ca

Summary: The Complainant made a complaint under the *Personal Information Protection Act* (PIPA) alleging the United Nurses of Alberta (the Organization) contravened the Act. The Complainant alleges the Organization disclosed her personal information without authority under the Act.

Specifically, the Complainant alleges that the Organization disclosed personal information to the Alberta Labour Relations Board (ALRB) that was not relevant to the matter before the ALRB.

The Adjudicator found that the Organization had authority to disclose the Complainant's personal information to the ALRB.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, s. 40, *Labour Relations Code*, R.S.A. 2000, c. L-1, ss. 16, 17, 153, *Personal Information Protection Act*, S.A. 2003, c. P-6.5, ss. 1, 20, 52

Orders Cited: AB: Decision F2020-D-01, Orders F2008-029, F2013-14, F2018-59, F2022-04, F2024-01, P2005-001, P2006-008

Cases Cited: *Leon's Furniture Limited v. Alberta (Information and Privacy Commissioner)*, 2011 ABCA 94 (CanLII)

I. BACKGROUND

[para 1] An individual made a complaint under the *Personal Information Protection Act* (PIPA) that the United Nurses of Alberta (the Organization) contravened the Act when it disclosed her personal information to the Alberta Labour Relations Board (ALRB).

[para 2] The Organization is a union, and at the relevant time, the Complainant was a member of the Organization. From the parties' submissions, I understand that the Organization brought four grievances on behalf of the Complainant against her employer. These grievances related to allegations made by the Complainant regarding workplace bullying, discipline imposed on the Complainant by her employer, and whether the Complainant is entitled to overtime pay for attending a meeting.

[para 3] Following the grievance process, the Organization decided not to advance the grievances to arbitration. The Complainant brought a complaint to the ALRB under section 153(1) of the *Labour Relations Code* (the Code) that the Organization breached its duty of fair representation (DFR) by not advancing the grievances.

[para 4] I will refer to the matter before the ALRB as the DFR complaint.

[para 5] The ALRB notified the parties that the DFR complaint was received on December 15, 2020, and directed the Organization to file a written response, stating:

Pursuant to the Board's Rules of Procedure, the Union is directed to include with its response, copied to the Complainant, any and all documents in its possession which are relevant and material to the Union's representation of the Complainant concerning the matters raised in the complaint. This shall include a copy of the relevant collective agreement, communications with the complainant, investigation materials, notes of union representatives, any grievances commenced and documents concerning the grievance, and any responses to the grievance by the Employer.

[para 6] This notice also set out the process that would follow:

Once the Board has received the responses, the complaint and the written submissions will be brought before an administrative panel of the Board for a documentary review. This panel decides whether a complaint should proceed to a full Board hearing or be summarily dismissed. The panel considers only the documentation that has been filed by the parties. The documentary review does not involve an in-person hearing. Complaints that appear to be without merit or appear to be frivolous, trivial or vexatious will be summarily dismissed without any further hearing.

[para 7] The Complainant made a complaint to this office about the information provided by the Organization to the ALRB as part of the DFR process (the privacy complaint). In her privacy complaint, the Complainant states:

The complainant has had 4 ongoing cases with the United Nurses of Alberta (UNA). The Alberta Labour Relations Board (ALRB) became involved and UNA sent documentation to the ALRB regarding these 4 cases. UNA also sent private, personal and health information about the complainant not regarding these 4 cases..."

[para 8] The Complainant states that in its response to the ALRB’s direction to provide a submission, the Organization included information relating to a separate matter that is not relevant to the four grievances at issue in the DFR matter before the ALRB. The Complainant argues that the Organization disclosed her personal information without authority when it included this additional information.

[para 9] Subsequent to the investigation conducted by this office, the Complainant requested an inquiry.

II. ISSUES

[para 10] The Notice of Inquiry, dated December 14, 2023, states the issues for inquiry as follows:

1. Did the Organization disclose “personal information” of the Complainant as that term is defined in PIPA?
2. Did the Organization disclose the information contrary to, or in compliance with, section 7(1) of PIPA (no disclosure without either authorization or consent)? In particular,
 - a. Did the Organization have the authority to disclose the information without consent, as permitted by section 20 of PIPA?
3. Did the Organization disclose the information contrary to, or in accordance with, section 19(1) of PIPA (disclosure for purposes that are reasonable)?
4. Did the Organization disclose the information contrary to, or in accordance with, section 19(2) of PIPA (disclosure to the extent reasonable for meeting the purposes)?

III. DISCUSSION OF ISSUES

Preliminary issue – Commissioner’s jurisdiction

[para 11] In its initial submission, the Organization argued that the Commissioner does not have jurisdiction to determine whether its disclosure to the ALRB was in compliance with PIPA. The Organization states that the Commissioner lacks sufficient expertise to determine what information is material and relevant to the matter before the ALRB. I understand the Organization to be arguing that because the disclosure of the Complainant’s personal information was to the ALRB in relation to ongoing matters before the ALRB, only the ALRB can say whether the information was relevant and material. The Organization states that if the standard under PIPA is whether the personal information at issue was relevant and material to the ALRB proceeding, the Commissioner’s finding could interfere with the ALRB’s function. The Organization further argues that the standard in this inquiry should be whether the disclosure of the Complainant’s personal information was for a legal proceeding and whether it was reasonable under PIPA.

[para 12] It is clear that the Commissioner has jurisdiction to decide the matters set out in the Notice of Inquiry. The Organization itself has pointed out that the Commissioner has jurisdiction to hear similar complaints regarding disclosure in the course of quasi-judicial proceedings such as proceedings before the Residential Tenancy Dispute Resolution Service (Order F2018-59), the Energy Resources Conservation Board (Order F2013-14, cited by the Organization), the Alberta Human Rights Commission (Order F2024-01, cited by the Organization), and the ALRB itself (Decision F2020-D-01).

[para 13] Arguing that the appropriate standard to be applied is reasonableness, rather than the relevance and materiality of the information at issue, is not the same as saying that the Commissioner lacks jurisdiction in this matter. I will consider the appropriate standard in the discussion of the issues, below.

Preliminary issue – Involvement of the ALRB

[para 14] The Organization argues that the ALRB should be added as a party to the inquiry; it argues that if the Organization was found to have disclosed the Complainant's personal information without authority under PIPA, then the ALRB's collection of that personal information would also contravene privacy legislation.

[para 15] In response to this argument, the Complainant has made it clear that she is not questioning the ALRB's authority to collect her personal information from the Organization.

[para 16] Further, it is not the case that if the Organization is found to have disclosed the Complainant's personal information without authority that the ALRB will have thereby collected the personal information without authority. The collection, use and disclosure of personal information by the ALRB is governed by the *Freedom of Information and Protection of Privacy Act* (FOIP Act), and the *Labour Relations Code*. Its authority to collect personal information is not directly tied to a party's authority to disclose personal information. In my view, the actions of the ALRB are not implicated in the issues to be determined in this inquiry.

Additional issue – Disclosure of Complainant's personal information in this inquiry

[para 17] In her rebuttal submission, the Complainant argues that the Organization disclosed more personal information to me, in its submissions to this inquiry, than it was authorized to do.

[para 18] After the submission schedule had closed, the Complainant submitted a request to make an additional submission to the inquiry. The proposed additional submission relates to the concerns about the content of the Organization's submissions to this inquiry (specifically, the personal information of the Complainant contained in the submissions), as well as concerns about the Organization's disclosure of the Complainant's personal information in recent communications with the ALRB.

[para 19] By letter dated March 21, 2024, I informed the parties that I would not accept the additional submission from the Complainant. I found that the additional submission was

essentially a request to add new complaints to this inquiry. I concluded that it is too late in this process to add new complaints to the inquiry. Although the Complainant also raised concerns about the content of the Organization's initial submission in her rebuttal submission, a rebuttal submission is also too late to raise new complaints.

[para 20] I understand that the Complainant could not have raised these issues before she did, as they occurred during the inquiry. The point remains that the scope of the inquiry was set out in the Notice of Inquiry, and I am not adding new complaints to the inquiry about events that occurred during or contemporaneous with the inquiry. These are new matters about which the Complainant can submit a new complaint if she wishes.

1. Did the Organization disclose “personal information” of the Complainant as that term is defined in PIPA?

[para 21] Personal information is defined in section 1(1)(k) of the Act as information about an identifiable individual. Previous Orders of this Office have stated that information about individuals acting in a professional capacity (information about work duties) is not personal information within the meaning of the Act, unless it has a personal dimension.

[para 22] The information at issue is information about the Complainant that she argues was not related to the four grievances before the ALRB. The Complainant states that this information relates to a fifth case or grievance, which the Complainant has referred to as the “WCB Surgical case.” The Complainant describes the personal information relating to this additional case as including WCB information, salary, payroll concerns, employee identification, and employment history. She further describes this information as personal information and health information. The Organization also describes the additional information as relating to a WCB matter.

[para 23] With her rebuttal submission, the Complainant provided a copy of the pages that relate to the additional matter, which she states is not relevant to the ALRB complaint.

[para 24] These pages primarily consist of emails between the Complainant, the Organization and the Complainant's employer. Specifically, it appears that the Organization was communicating with the Complainant, and with her employer on the Complainant's behalf, to address concerns about pay the Organization owed to the Complainant in relation to several matters. I agree that these pages include salary and payroll information, and employment history. While this information relates to the Complainant's work, it is not information merely about her acting in a professional capacity. The information is the Complainant's personal information.

2. Did the Organization disclose the information contrary to, or in compliance with, section 7(1) of PIPA (no disclosure without either authorization or consent)? In particular,

- a. Did the Organization have the authority to disclose the information without consent, as permitted by section 20 of PIPA?**

[para 25] Where the issue in an inquiry involves the collection, use and/or disclosure of personal information, the Complainant has the initial burden of proof, in that she has to have some knowledge, and adduce some evidence, regarding what personal information was collected, used, and/or disclosed; the Organization then has the burden to show that its collection, use and disclosure of the Complainant's personal information was in accordance with PIPA (Order P2005-001 at para. 8; Order P2006-008 at para. 11).

[para 26] In this case it is clear that the Complainant's personal information was disclosed by the Organization to the ALRB; the Organization does not dispute this.

[para 27] The issue in the Notice of Inquiry asks if the Organization disclosed the Complainant's personal information in compliance with section 7(1) of the Act. Section 7 states:

7(1) Except where this Act provides otherwise, an organization shall not, with respect to personal information about an individual,

- (a) collect that information unless the individual consents to the collection of that information,*
- (b) collect that information from a source other than the individual unless the individual consents to the collection of that information from the other source,*
- (c) use that information unless the individual consents to the use of that information, or*
- (d) disclose that information unless the individual consents to the disclosure of that information.*

[para 28] The Organization argues that it was permitted to disclose the Complainant's personal information under section 20(m) of the Act, which 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:

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

[para 29] Section 1(1)(f) of the Act defines the term "investigation" for the purposes of the Act. It states:

1(1) In this Act,

(f) "investigation" means an investigation related to

- (i) a breach of agreement,*
- (ii) a contravention of an enactment of Alberta or Canada or of another province of Canada, or*
- (iii) circumstances or conduct that may result in a remedy or relief being available at law,*

if the breach, contravention, circumstances or conduct in question has or may have occurred or is likely to occur and it is reasonable to conduct an investigation [...]

[para 30] Section 1(1)(g) of the Act defines the term “legal proceeding” for the purposes of the Act. It states:

1(1) In this Act,

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

(i) a breach of 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 31] The Complainant argues that the DFR matter before the ALRB was not a legal proceeding, but has not provided any reasons for this statement.

[para 32] From the information before me, I understand that the Complainant filed a complaint with the ALRB against the Organization. The ALRB’s Director of Settlement notified the parties of the complaint, and described the next steps as follows:

Once the Board has received the responses, the complaint and the written submissions will be brought before an administrative panel of the Board for a documentary review. This panel decides whether a complaint should proceed to a full Board hearing or be summarily dismissed. The panel considers only the documentation that has been filed by the parties. The documentary review does not involve an in-person hearing. Complaints that appear to be without merit or appear to be frivolous, trivial or vexatious will be summarily dismissed without any further hearing.

[para 33] After receiving submissions from the Complainant and the Organization, the ALRB issued a written decision dismissing the complaint under section 16(4)(e) of the Code.

[para 34] The ALRB is authorized under the Code to receive applications, references and complaints under the Code; to conduct investigations, inquiries and hearings into those matters; and make orders, decisions, notices, directives and declarations it considers necessary (see section 12). Under section 16(1) of the Code, an employee can file a complaint with the ALRB that their union failed to comply with a provision of the Code, including a complaint that a union contravened section 153(1) of the Code by denying a union member the right to be fairly represented. Section 16(4) of the Code sets out the Board’s authority to deal with such a complaint. It states:

16(4) When a complaint is made under subsection (1), a reference is made under subsection (3) or any other application to the Board is made under this Act, the Board may do one or more of the following:

(a) appoint an officer to inquire into the complaint, reference or application and endeavour to effect a settlement within a reasonable time;

(b) refer the matter to one or more members of the Board pursuant to section 11(1);

- (c) decide the matter itself after any hearings or inquiries that it considers necessary;*
- (d) where the matter in issue is properly the subject of collective agreement arbitration, or some other proceeding authorized by statute, decline to proceed with the matter or proceed on any terms that the Board considers just;*
- (e) where the Board is of the opinion that the matter is without merit, or is frivolous, trivial, vexatious, filed with improper motives or an abuse of process, reject the matter summarily.*

[para 35] If the ALRB concludes that a union contravened section 153(1) of the Code, it can impose a remedy, including awarding damages against the union (sections 16(8), 17(1)).

[para 36] Given the above, the matter before the ALRB falls within the definition of “legal proceeding” in section 1 of PIPA.

[para 37] The fact that the matter did not advance to the hearing stage in the ALRB’s process does not mean that the matter does not constitute a legal proceeding, nor that the personal information was not disclosed for the purpose of a legal proceeding. The Complainant’s complaint to the ALRB could have proceeded to a hearing and could have resulted in remedies imposed against the Organization. The ALRB directed the Organization to provide written submissions as the first step of its process; the personal information at issue was disclosed by the Organization to the ALRB in its submission to the ALRB, made in response to the ALRB’s direction. Therefore, the disclosure was for the purpose of a legal proceeding, and authorized under section 20(m) of the Act.

[para 38] I will next consider whether it was reasonable for the Organization to include the personal information at issue in its submission to the ALRB, under sections 19(1) and (2) of the Act. I will consider both issues together.

- 3. Did the Organization disclose the information contrary to, or in accordance with, section 19(1) of PIPA (disclosure for purposes that are reasonable)?**
- 4. Did the Organization disclose the information contrary to, or in accordance with, section 19(2) of PIPA (disclosure to the extent reasonable for meeting the purposes)?**

Complainant’s arguments

[para 39] The Complainant argues that the personal information relating to the additional “WCB” case was not relevant to the DFR complaint she brought to the ALRB. That complaint related to four specific grievances regarding workplace bullying, discipline imposed on the Complainant by her employer, and whether the Complainant is entitled to overtime pay for attending a meeting. This overtime pay concern does not appear to relate to the pay concerns discussed in the documents the Complainant has identified as extraneous to the DFR complaint.

[para 40] The Complainant states that the ALRB’s direction to the Organization was to provide all documents relevant and material to the matters raised in the DFR complaint. As this additional information was not related to the grievances that led to the DFR complaint, it is not

relevant or material to the DFR matter and needn't have been provided in response to the ALRB's direction.

Organization's arguments

[para 41] The Organization argues that the additional information relating to the WCB matter was relevant to the ALRB's determination regarding whether the Organization denied the Complainant a right to be fairly represented under section 153 of the Code.

[para 42] In its initial submission, the Organization provided a copy of the ALRB's Information Bulletin #18, which relates to a unions duty of fair representation. The Bulletin describes the duty of fair representation, and the ALRB's authority to consider complaints regarding this duty, as follows:

This **duty of fair representation** requires unions to act in good faith. This means unions may not act arbitrarily or discriminatorily. ...

When a complaint is made, the Labour Relations Board examines the fairness of the union's conduct. The question before the Board in these cases is, did the union deal fairly with the employee's grievance? This is an examination of the union's behaviour - not an appeal of the union's decision or the employer's actions. Grievances are dealt with through the grievance and arbitration process outlined in the collective agreement.

The Board does not have the power to rule on the employee's grievance. It is, however, often necessary for the Board to review and understand the facts of a grievance. This is because the Board must assess whether the union's investigation reflected the worthiness and seriousness of the employee's case. Again, this is an examination of the union's behaviour and not an appeal of the union's decision or the employer's actions.

[para 43] The Bulletin states factors a union must consider in determining whether to advance a grievance, including avoiding ill will, discrimination or arbitrariness.

[para 44] The Bulletin also explains what a union should include in its submission to the ALRB on a DFR matter. It states:

The Board has previously stated it is essential that unions provide a comprehensive reply to any duty of fair representation complaint to ensure a fair and efficient handling of the complaint. This reply should include a detailed review of the factual history surrounding the complaint with a view to demonstrating the union has exercised its discretion in dealing with the complainant's concerns in good faith, objectively and honestly, after a thorough study of the grievance and the case, and taking into account the significance of the grievance and its consequences for both the employee and the union. The union's factual history should include how and when the union became aware of the complainant's concerns; what steps the union took to investigate and evaluate the complaint; what steps it took, if any, to attempt to resolve the matter; the reasons for reaching the conclusions it did on how to handle the complainant's concerns; and the steps it took to communicate with the complainant to ensure he or she remained informed as this process unfolded.

[para 45] The Organization argues that the additional information relates to the Organization's attempts to settle the Complainant's pay concerns with her employer. It states (initial submission at page 9):

The union provides several more emails sent by and to Union representatives to address the WCB pay issues. It is relevant to demonstrate the extensive efforts undertaken by UNA to support our member. This can also be reasonably offered as evidence to contradict the complainant's allegations that the union demonstrated bias against her or discriminated against her. In light of the Board's request for any and all documents, it is difficult for the Union to justify providing select documentation in its possession about an issue while withholding others. The Board needs to have a full record to assess the Union's full efforts.

Analysis

[para 46] From the submissions of both parties, it is clear that the information identified by the Complainant as extraneous to the four grievances relating to the DFR complaint is not directly related to the four grievances. Rather, this additional information appears to relate to concerns raised about pay owed to the Complainant by her employer in relation to a WCB claim; the Organization appears to have been acting on behalf of the Complainant with respect to this matter.

[para 47] The question remains whether it was reasonable for the Organization to include this additional information in its submission to the ALRB in response to the DFR complaint.

[para 48] In *Leon's Furniture Limited v. Alberta (Information and Privacy Commissioner)*, 2011 ABCA 94 (CanLII) (*Leon's*), the Court of Appeal discussed how the reasonable standard is to be interpreted under PIPA. It said that 'reasonableness' is not "necessity", "minimal intrusion" or "best practices" (at para. 39). It further stated that an organization need only show that "its policies were 'reasonable', not that they were the 'best' or 'least intrusive' approaches" (at para. 57).

[para 49] The Organization has argued that the standard to be applied in considering these issues is whether the disclosure of the Complainant's personal information was reasonable, and not whether the information was relevant and material to the proceeding.

[para 50] To the extent that the Organization's argument means that the disclosure could be reasonable under section 19 of PIPA even if the ALRB ultimately did not rely on the information in its determination, I agree. The standard applied by the ALRB in determining what information is relevant and material to its deliberations is a different standard from whether a party's disclosure of personal information to the ALRB for a proceeding is reasonable under PIPA. My review does not extend to whether the ALRB ought to have accepted or relied on particular information in its deliberations.

[para 51] The Organization has cited Order F2013-14, which relates to the use and disclosure of personal information by a quasi-judicial body in the course of its proceedings and in its resulting decision. The Organization has also cited Order F2024-01, which relates to the

disclosure of personal information by the Alberta Human Rights Commission in the course of proceedings brought by the complainant in that case.

[para 52] In these Orders, the adjudicators have noted the importance of not encroaching on a body's exercise of its quasi-judicial responsibilities. These Orders relate to actions of the body conducting the proceeding, and not to the actions of one party to the proceeding.

[para 53] In contrast, Order F2018-59 considers the disclosure of personal information by a party to a proceeding before the Residential Tenancy Dispute Resolution Services (RTDRS), which was conducting a quasi-judicial proceeding.

[para 54] In that Order, the University of Alberta notified a student – the complainant in that matter – that it was terminating the student's lease to reside on campus, on the basis that the student was no longer a full-time student. The student provided evidence that he was on medical leave; the University then rescinded the eviction notice. However, when the student's medical leave expired, the University applied to the RTDRS to terminate a student's rental lease. The student made a complaint to this office, that the University disclosed his personal information to the RTDRS without authority; the information at issue in that case included medical information, information about his student status, and course transcripts. The student argued that this information was not relevant to the matter before the RTDRS.

[para 55] The University is subject to the FOIP Act. In that case, it had argued that the disclosure of the student's personal information was authorized under section 40(1)(v) of that Act, which authorizes the disclosure of personal information for the use in a legal proceeding. It also argued that the extent of the information disclosed was necessary under section 40(4) of the FOIP Act.

[para 56] While Order F2018-59 addresses the disclosure of personal information under the FOIP Act, the circumstances of that case are substantially similar to the circumstances of the present case, and the analysis in that Order is applicable here for the following reasons.

[para 57] The first question in both cases, broadly speaking, is whether the disclosure of the personal information at issue was for the purpose of a legal proceeding. In both cases, the answer is 'yes'.

[para 58] Under the FOIP Act, the next question is whether the personal information was disclosed only to the extent necessary to meet the stated purpose under section 40(4) of the FOIP Act, where 'necessary' includes disclosures that permit a public body "a means by which they may achieve their objectives... that would be unavailable without [the disclosure]" (see Orders F2022-04 and F2008-029).

[para 59] That question under the FOIP Act is similar to the questions raised by sections 19(1) and (2) of PIPA: whether Organization's purpose for disclosing the Complainant's personal information was reasonable and whether the extent of the personal information disclosed was reasonable to meet the stated purpose. Arguably the standard of "necessary" under section 40(4) of the FOIP Act is higher than the reasonableness standard set out in PIPA.

[para 60] In Order F2018-59, the student had argued that the University disclosed information to the RTDRS that was not relevant to that body's proceeding; this is the same argument made by the Complainant here. Specifically, the University had provided the RTDRS with documents that the student had provided to the University in support of his medical leave in response to its first termination notice. The University argued that these documents had a "line of connection" to the later termination at issue before the RTDRS, as the basis for both termination notices were the same. The University had argued (cited at para. 30 of Order F2018-59):

Parties make their best efforts to determine which records may be relevant to the adjudicator, but ultimately it is the role of the adjudicator to determine which records are relevant and necessary.

Furthermore, if evidence submitted in good faith was deemed not relevant by the hearing adjudicator and a party to the hearing could then use that assessment to make a privacy complaint, it would create a chilling effect on the quasi-judicial process, potentially limiting legal rights. If there is some line of connection to the issues at hand, then parties must be allowed a reasonable margin of error in attempting to determine what will and will not ultimately be considered relevant and necessary by an adjudicator.

[para 61] I accepted that the information at issue in that case had a logical connection to the matter before the RTDRS, as the earlier termination notice related to the later termination matter before the RDTRS. I concluded (at paras. 32-34):

Whether the Public Body's disclosure of all of those documents was necessary for the purposes of section 40(4) cannot be an assessment made with hindsight knowledge of what the RTDRS considered to be relevant to its decision. I agree with the Public Body that parties must have 'some reasonable margin of error' when deciding what material to submit to a decision-maker in a quasi-judicial proceeding. Public bodies must be permitted to make their best case; what is ultimately considered to be relevant to the proceeding is a determination for the decision-maker.

I do not mean to suggest that being a party to a court or quasi-judicial proceeding will give public bodies *carte blanche* with respect to disclosing personal information. In a situation where some or all of the personal information disclosed for a proceeding does not have a logical connection to the matters at hand, section 40(4) may not be met.

In this case, there is a logical connection between the documents submitted by the Public Body and the matter before the RTDRS, such that it was reasonable for the Public Body to believe they may be relevant to the decision. Therefore, it is my view that the Public Body disclosed the Complainant's personal information in good faith. I find that the disclosure was not beyond what was necessary for the purpose of section 40(4). To find otherwise could unreasonably fetter a public body's ability to make its case in court or quasi-judicial proceedings.

[para 62] In my view, this analysis also applies to an organization under PIPA. Like public bodies under the FOIP Act, organizations should be given a reasonable margin of error in deciding what material to submit to a decision-maker in a legal proceeding. This is consistent with the Court of Appeal's decision in *Leon's*.

[para 63] In the present case, the additional information that the Complainant argues ought not to have been disclosed by the Organization relates to the pay issues between the Complainant

and her employer in relation to a WCB matter, and the Organization's involvement on behalf of the Complainant. The relevant communications on this matter are dated between October 2019 and May 2020.

[para 64] The relevant dates relating to the four grievances that led to the DFR complaint are similar:

- the incidents that led to the grievances appear to have occurred around 2019;
- the Organization's decisions not to advance the grievances were made in 2020; and
- the Complainant filed her complaint with the ALRB in December 2020.

[para 65] The Organization argues that its actions on behalf of the Complainant in the WCB matter were included in its submission to the ALRB to show that the Organization was not biased against the Complainant. Rather, the Organization continued to represent the Complainant on matters other than the grievances that led to the DFR complaint. The Organization argues that this was relevant to the DFR complaint, as a determination regarding such complaints includes considering whether the Organization acted in a discriminatory manner or showed bias against the Complainant.

[para 66] Based on the information before me, I agree that the additional information relating to the WCB matter has a logical connection to the DFR complaint. It is relevant to the Organization's relationship with, and representation of, the Complainant, which appears to be relevant to the DFR complaint before the ALRB. It shows the Organization's continued involvement in representing the Complainant during the same timeframe in which the grievances that led to the DFR complaint occurred. Following the analysis above, whether the ALRB ultimately considered this additional information is not relevant to my determination.

[para 67] Although the Complainant has referred to the personal information at issue as including medical and health information, this does not appear to be the case. The parties both refer to the additional information as relating to a WCB matter but there are only a few mentions of the WCB in the pages. Some of the records are difficult to decipher; the Complainant's copies include handwritten notes where she appears to have written in the text that is otherwise largely illegible. The information in these pages primarily relates to payments made to the Complainant by her employer, and calculations regarding those payments. There are a few references in the pages to the Complainant's WCB leave; nothing in the records appears to indicate why the Complainant was on leave or otherwise detail the nature of the Complainant's WCB claim. Presumably, as the Complainant refers to the matter as the "WCB Surgical case", her leave related to surgery, though this is not apparent from the pages themselves. In other words, the additional information does not appear to contain information about the Complainant's injury that led to the WCB claim or other medical information.

[para 68] Had the Organization's submission to the ALRB contained more sensitive information such as doctor's letters, test results etc., the analysis and outcome regarding the reasonableness of such a disclosure may have been different. This is especially the case because the additional information relating to the WCB matter was offered primarily to provide the ALRB context for the Organization's relationship with the Complainant; the substantive matter

to which the WCB matter relates was not before the ALRB. In this case, the additional information does not contain details of the Complainant's WCB claim, or medical information.

[para 69] I find that it was reasonable for the Organization to include this additional information in its submission to the Organization for the purpose of the ALRB's proceeding. I also find that the extent of the disclosure was reasonable for that purpose.

IV. ORDER

[para 70] I make this Order under section 52 of the Act.

[para 71] I find that the Organization had authority to disclose the Complainant's personal information as it did.

Amanda Swanek
Adjudicator