ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER P2024-07

October 1, 2024

UNIVERSITY OF ALBERTA STUDENTS' UNION

Case File Number 019300

Office URL: www.oipc.ab.ca

Summary: The Complainant was an elected member of the Council of University of Alberta Student's Union (the Organization) in 2004. In November of 2020, the Complainant learned that documents containing his personal information about an incident in 2004 relating to his role as an elected member were publicly accessible on the Organization's website.

The Complainant contacted the Organization in November of 2020 and requested that the information be removed from the website. The Organization did not respond to his request. The Complainant submitted a complaint to the Commissioner on November 16, 2020 that the Complainant's personal information was being disclosed contrary to the *Personal Information Protection Act* (PIPA).

In the course of the inquiry, the Organization removed the information that was the subject of the complaint from its website. The Organization then argued that the issues for inquiry were moot.

The Adjudicator determined that the inquiry was not moot. The Adjudicator determined that the Organization had met its duty under PIPA by removing the information that was the subject of the complaint from its website. The Adjudicator directed the Organization to comply with PIPA in its treatment of the Complainant's personal information in the future.

Statutes Cited: AB: *Personal Information Protection Act* S.A. 2003, c. P-6.5, ss. 1, 7, 8, 9, 11, 12, 19, 20, 21, 52, 56; *Regulations Act*, R.S.A. 2000, c. R-14, s.1

Authorities Cited: AB: Order P2015-07. P2010-019, P2021-02

Cases Cited: *Penny Lane Entertainment Group v. Alberta (Information and Privacy Commissioner)*, 2009 ABQB 140 (CanLII)

I. BACKGROUND

[para 1] The Complainant was an elected member of the Council of University of Alberta Student's Union (the Organization) in 2004. In November of 2020, the Complainant learned that documents containing his personal information about an incident in 2004 relating to his role as an elected member were publicly accessible on the Organization's website.

[para 2] The Complainant contacted the Organization in November of 2020 and requested that the information be removed from the website. The Organization did not respond to his request. The Complainant submitted a complaint to the Commissioner on November 16, 2020 that the Complainant's personal information was being disclosed contrary to the *Personal Information Protection Act* (PIPA).

[para 3] The Commissioner agreed to conduct an inquiry into the following issues:

> 1. Is the information at issue the Complainant's "personal information" and/or "personal employee information" as these terms are defined in PIPA?
>
> 2. If the information is personal information, did the Organization have the authority to disclose the information without consent, as permitted by section 20 of PIPA?
>
> 3. If the information is personal information, is the Complainant deemed to have consented by virtue of the conditions in section 8(2)(a) and (b) of PIPA having been met?
>
> 4. If the information is personal information and the Organization disclosed it, did the Organization disclose information contrary to, or in accordance with, section 19 of PIPA (disclosure for purposes that are reasonable)?

[para 4] The Commissioner delegated the authority to conduct the inquiry to me.

[para 5] After I reviewed the Organization's submissions, I wrote the Organization regarding its submissions and indicated it was unclear that I would need to hear from the Complainant if the Organization did not provide further arguments and submissions. In its response to my letter, the Organization stated:

Proposed Resolution

Without prejudice to the UASU's submissions provided previously and above, the UASU is prepared to resolve this issue by redacting the relevant portions of all the documents under its control that remain published on its website and are the subject of [the Complainant's] complaint.

[The Complainant] specifies three documents that relate to the Students' Council meeting held October 7, 2004 that are the subject of his complaint – the Agenda, Late Additions, and Votes and Proceedings (Minutes). He notes that he takes no issue with the disclosure of his name as a member of council, his attendance at the meeting of council, or that he ceased to be a member of the council prior to the expiration of his term of office. To that end, the UASU proposes to redact the documents as follows:

1. Agenda Package – Redact item 2004-13/3a and all referenced documents (SC 04- 13.01-SC 04-13.03).
2. Late Additions – Redact item 2004-13/5a and associated document LA 04-13.01 (which was previously redacted and will remain so).
3. Votes and Proceedings – Redact all items under item 2004-13/3 Speaker's Business.

This would be fully responsive to the Complaint and should resolve the Inquiry. Please confirm whether this approach is acceptable to [the Complainant] and the Adjudicator.

[para 6] In response, the Complainant stated:

The organization's proposed resolution does not provide sufficient transparency and accountability for the organization's unlawful disclosure of my personal information on a continuous basis for nearly two decades, nor does it provide any credible commitment to prevent such disclosure after the inquiry is resolved. The organization delayed action on my complaint for nearly 2 years after I first contacted the organization about it, and the organization acknowledged that it was "aware" of my complaint for most of that time. The organization forcefully argued that the disclosures were not only justified but necessary on account of its own obligations of accountability, transparency, etc. The organization still claims to have a right to disclose the information that is at issue here. Neither complainants nor OIPC officials should be required to "resolve" a complaint under these circumstances and merely hope that the organization does the right thing in the absence of an order. The only appropriate disposition of this inquiry is an order pursuant to section 52(3)(e) of the Act that requires the organization to stop disclosing my personal information on its public website.

[para 7] After I reviewed the parties' submissions, I wrote the parties and said:

The Complainant has requested that the inquiry proceed. He indicates that he is seeking an order under section 52(3) of the *Personal Information Protection Act*.

As the issues for inquiry are not resolved, the inquiry will continue.

As the Organization provided information regarding the decision to take down the information that is the subject of the complaint on a "without prejudice" basis, I will not admit that information into evidence and it will not form part of any order I issue.

The parties may submit any additional submissions they would like to make no later than **April 5, 2024**, and are to copy each other on their submissions.

[para 8] The parties provided additional submissions. In its submissions, the Organization explained that I had misunderstood its letter. The Organization was not proposing to redact information, but had actually redacted it. Moreover, it has made an undertaking to maintain the redactions. The Organization stated:

> The Complainant also asserts that there is a reasonable apprehension that the organization will resume disclosure of the information in the absence of an Order from the OIPC. There is no basis in fact for this apprehension.
>
> The UASU will undertake to maintain its redactions on a permanent basis. In the event that were not the case, the Complainant would be free to raise such an issue with the OIPC, who undoubtedly would take into consideration the representations of the UASU in its correspondence to you here. The OIPC should not, without reason, assume that a party who has redacted materials and removed information from the public sphere will immediately reverse those actions upon resolution of a complaint. If that were the case, there would be no incentive for any party to a complaint to seek to resolve the complaint by removing the disclosure of personal information in advance of an order.
>
> The UASU submits that when the test for mootness is properly applied, this matter should not proceed.
>
> Finally, we wish to address your comment that you will "not admit" the evidence that the UASU took down the information in question and has undertaken to maintain the redacted versions of the documents in question. While it is true the UASU offered to take down information on a "without prejudice" basis at an earlier stage of the complaint process, that is not a basis to ignore the fact that the UASU has since redacted the relevant portions of the documents in question on an unqualified basis. The unqualified redaction was communicated in our letter dated February 6, 2024. This cannot be ignored as it fully resolves the complaint.

[para 9] The Organization is clear that it has now removed the information that is the subject of the complaint from its website. It wishes that fact to form part of the evidence for the inquiry with regard to the issue of mootness. I will admit that evidence. I will also address the issue of mootness raised by the Organization before deciding any issues set for the inquiry.

II. ISSUES

ISSUE A: Are the issues the Commissioner referred to inquiry moot?

ISSUE B: Is the information at issue the Complainant's "personal information" and/or "personal employee information" as these terms are defined in PIPA?

ISSUE C: If the information is personal information, did the Organization have the authority to disclose the information without consent, as permitted by section 20 of PIPA?

ISSUE D: If the information is personal information, is the Complainant deemed to have consented by virtue of the conditions in section 8(2)(a) and (b) of PIPA having been met?

ISSUE E: If the information is personal information and the Organization disclosed it, did the Organization disclose information contrary to, or in accordance with, section 19 of PIPA (disclosure for purposes that are reasonable)?

III. DISCUSSION OF ISSUES

ISSUE A: Are the issues the Commissioner referred to inquiry now moot?

[para 10] The Complainant argues:

> The organization's proposed resolution does not provide sufficient transparency and accountability for the organization's unlawful disclosure of my personal information on a continuous basis for nearly two decades, nor does it provide any credible commitment to prevent such disclosure after the inquiry is resolved. The organization delayed action on my complaint for nearly 2 years after I first contacted the organization about it, and the organization acknowledged that it was "aware" of my complaint for most of that time. The organization forcefully argued that the disclosures were not only justified but necessary on account of its own obligations of accountability, transparency, etc. The organization still claims to have a right to disclose the information that is at issue here, Neither complainants nor OIPC officials should be required to "resolve" a complaint under these circumstances and merely hope that the organization does the right thing in the absence of an order. The only appropriate disposition of this inquiry is an order pursuant to section 52(3)(e) of the Act that requires the organization to stop disclosing my personal information on its public website.

[para 11] The Complainant is clear that he is seeking an order of the Commissioner under section 52(3) of PIPA requiring the Organization to cease disclosing his personal information. The Organization has now removed the information that is the subject of the complaint from its website on an "unqualified basis".

[para 12] The Organization has redacted the information that is the subject of the Complainant's complaint. It has also made an undertaking to maintain the redactions. The Organization's position is that these actions on its part render the complaint moot.

[para 13] The Complainant argues:

> […] The organization's counsel's reference to "without prejudice" was probably intended to mean that the post-complaint changes to the disclosures do not invalidate the organization's argument about the alleged lawfulness of the organization's disclosures. The mere cessation of impugned conduct generally does not, on its own, rise to the level of an admission about the lawfulness of the conduct.
>
> Therefore, the Feb 6, 2024 letter is admissible.
>
> However, it also supports the inference that the organization is not actually serious about maintaining the redactions. The organization's assurance of a "permanent undertaking" in today's letter is significantly undermined by its prior indifference to this issue and later assertions that the disclosures were mandatory on account of transparency, accountability and good governance practice. It is also undermined by the Feb 6, 2024 letter which merely offered the redactions, in a rather tentative way, in conjunction with the resolution of the inquiry. That the organization only now asserts a "permanent undertaking" after the passage of so much controversy and time, and only when facing a financial liability, on balance does not support a finding about the organization's actual intentions.

[para 14] From the foregoing, I understand that the Complainant is concerned that his personal information could be disclosed by the Organization in the future, as it continues to have custody and control over it. He requires the force of an order of the Commissioner to ensure that the information is not disclosed again. The Organization's position is that it has now removed the information that is the subject of the complaint from its website and reasons that the issues for inquiry are moot.

[para 15] Although the Complainant is concerned that the Organization does not intend to honor its undertaking, there is no basis on which to draw an inference that the undertaking is anything other than sincerely given. The question is whether the undertaking renders the inquiry moot. For the reasons that follow, I find it does not.

[para 16] Section 52 of PIPA states, in part:

> *52(1) On completing an inquiry under section 50, the Commissioner must dispose of the issues by making an order under this section.*
>
> *[...]*
>
> *(3) If the inquiry relates to any matter other than a matter referred to in subsection (2), the Commissioner may by order do one or more of the following:*
>
> > *(a) confirm that a duty imposed by this Act or the regulations has been performed or require that a duty imposed by this Act or the regulations be performed;*
> >
> > *[...]*
> >
> > *(e) require an organization to stop collecting, using or disclosing personal information in contravention of this Act or in circumstances that are not in compliance with this Act;*
> >
> > *(f) confirm a decision of an organization to collect, use or disclose personal information [...]*

[para 17] The Commissioner may order an organization to stop disclosing personal information in contravention of PIPA, confirm that an organization has performed a duty, or require it to do so, or confirm an organization's decision to disclose information. Even though the Organization has stopped disclosing the information that is the subject of the complaint, an order under section 52(3)(a) confirming that the Organization met its duty by removing the information, or alternatively, an order under section 52(3(f) confirming that the Organization was authorized to disclose the information, would not be moot. The Organization continues to have the Complainant's personal information in its custody and control; the Complainant would like to ensure that it is not disclosed without authority in the future. To make an order under sections 52(3)(a) or (f), I must address the issues the Commissioner referred to inquiry.

[para 18] As I find that the issues sent to inquiry are not moot, I will decide the issues set out in the notice of inquiry.

ISSUE B: Is the information at issue the Complainant's "personal information" and/or "personal employee information" as these terms are defined in PIPA?

[para 19] "Personal information" is defined in section 1(1)(k) of PIPA, which states:

> *1(1) In this Act,*
>
> > *(k) "personal information" means information about an identifiable individual;*

[para 20] In his submissions, the Complainant states:

> The organization was continued as a "students association" under the Post-secondary Learning Act. For a few months in 2004, ending sometime prior to Oct 7, 2004, I was an unpaid volunteer member of the council of the organization. The functions of the council are specified in section 95 of the PSLA. A member of the council is analogous to a "director" for the purposes of section 1(1)(e)(i) of PIPA. Therefore, during the time when the harassment complaint letter came into existence, I was an "employee" of the organization, and during the entire time of the disclosure, I was a former employee, for the purposes of PIPA.
>
> The disclosed information is personal employee information because it was reasonably required for the purposes of managing my volunteer-work relationship with the organization.
>
> The disclosed information clearly and unambiguously identifies me as having previously been a member of the council of the organization, the existence of a complaint about my alleged conduct by the organization's employee, and the details of that alleged conduct and my alleged motives. This squarely falls within the definition of "personal information" that has been applied by OIPC in the past. Unreasonable disclosure of information in the nature of the disclosed information that is the subject of this inquiry is precisely what the Legislature sought to prohibit by enacting PIPA.
>
> Therefore, the disclosed information is both "personal information" and "personal employee information."

[para 21] The Organization states in its submissions that it does not dispute that some of the information that is the subject of the complaint is personal information:

> The UASU does not dispute that the Complainant's personal information is contained in the Agenda, the Complainant's letter of resignation, the Student's complaint, the Minutes, and the Complainant's letter retracting his resignation […] The information in these documents is also personal employee information as it is reasonably required for the purposes of managing and terminating an employment or volunteer-work relationship, specifically a vote of non-confidence and a resignation, within the parameters of the PIPA's definition of "employee".

[para 22] I agree with the parties that the information that is the subject of the complaint is the Complainant's personal information as it reveals information about the Complainant as an identifiable individual. The information reveals that the Complainant was the subject of a complaint and provides details of the complaint. The complaint

contains the Complainant's name and asserts that he posted particular information on his website and holds particular views, which the author of the complaint thought made the Complainant unfit to carry out the responsibilities he had been elected to perform.

[para 23] The Organization argues that the information that is the subject of the complaint is the Complainant's "work product". "Work product" is information produced by an individual acting in a representative capacity. Work product is not considered personal information under PIPA because the information is about the employee's work for an organization as its representative and not as an identifiable individual. This point is made in Order P2015-07, where the Adjudicator said:

> In Order P2012-08, the adjudicator considered whether information about an organization can also be personal information about an individual such that PIPA would apply. She said (at paras. 16, 18-19):
>
> > The question becomes whether information about an individual acting in a commercial capacity, or an individual acting as a representative of a corporation, such as a director, is personal information within the terms of section 1(1)(k).
> > …
> >
> > If information about an individual acting solely in a commercial capacity, or solely in a capacity as a representative of an organization, is to be interpreted as personal information, then this interpretation would have the effect of protecting information rights of some, but not all, organizations. An organization collecting the business information of sole proprietors or single shareholder corporations would arguably be required to comply with PIPA when they do so, even though it would not be necessary to do so in the case of a larger organization. Such a result would appear to be entirely arbitrary, given that both small and large organizations may conduct the same business and be required to furnish the same kinds of information to other organizations. In my view, the better approach is to consider that information that is about an individual acting solely in the individual's capacity as a representative of an organization, or in a commercial capacity is not personal information for the purposes of section 1(1)(k).
> >
> > In saying this, I do not mean that information about an individual acting in a commercial capacity is never personal information. If such information appears in the context of information about the individual in a personal capacity, such as the case where an individual is subjected to disciplinary proceedings arising from actions taken in a representative capacity, then the information may be personal information within the terms of section 1(1)(k). However, information that is solely about an individual acting in a commercial or representative capacity in circumstances where the information lacks a personal dimension, will not fall within section 1(1)(k).
>
> I agree with the above analyses. In this case, the information at issue is information contained in an email and is about outstanding fees owed to the Organization. The email speaks in terms of outstanding fees owed by the Complainant; however, the Organization's arguments indicate that these fees are owed by the Complainant's agricultural operation, rather than by the Complainant as an individual.

From the foregoing, I conclude that information will be "work product" if it is created in a representative capacity and lacks a personal dimension.

[para 24] In this case, the information that is the subject of the Complainant's complaint is information about the Complainant acting in a personal capacity. The complaint made about the Complainant is about information contained on his own website. In addition, the complaint is about views the Complainant apparently expressed outside his representative duties. The complaint would also have personal consequences for the Complainant as the complaint expressed the position that the Complainant's personal views were incompatible with his role as a faculty representative. So even though the complaint was raised vis a vis the Complainant's role with the student council, the content of the complaint related to him in his personal capacity (rather than actions he took as a member of the council). Moreover, the discussion of the complaint is a akin to a disciplinary discussion that has a personal dimension. I find that the information that is the subject of the complaint is not work product but personal information.

[para 25] I note that both the Complainant and the Organization take the position that the information that is the subject of the complaint is personal employee information within the terms of section 1(1)(j) of PIPA. Whether personal information is personal employee information is relevant to the application of section 21 of PIPA. Section 21 authorizes an employer to disclose personal employee information without consent if the disclosure meets its requirements. As both parties made arguments in relation to "personal employee information" I will also consider whether section 21 authorized the Organization to post the information that is the subject of the complaint on its website, when I review the question of whether the Organization was authorized to disclose the Complainant's personal information by section 20.

ISSUE C: If the information is personal information, did the Organization have the authority to disclose the information without consent, as permitted by section 20 of PIPA?

[para 26] Section 7 of PIPA prohibits organizations from disclosing personal information without consent, unless disclosure without consent is authorized by another provision of PIPA. Section 7 states, in part:

> *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.

[...]

The Organization argues that it is a non-profit organization and is not required to comply with section 7 of PIPA. I turn first to this argument.

Is the Organization required to comply with PIPA?

[para 27] In its initial submissions, the Organization argued that it is a non-profit organization and that section 56 of PIPA limits the application of PIPA to it. Section 56 of PIPA states, in part:

56(1) In this section,

[...]

(b) "non-profit organization" means an organization

(i) that is incorporated under the Societies Act or the Agricultural Societies Act or that is registered under Part 9 of the Companies Act, or

(ii) that meets the criteria established under the regulations to qualify as a non-profit organization.

56(2) Subject to subsection (3), this Act does not apply to a non-profit organization or any personal information that is in the custody of or under the control of a non-profit organization.

(3) This Act applies to a non-profit organization in the case of personal information that is collected, used or disclosed by the non-profit organization in connection with any commercial activity carried out by the non-profit organization.

[...]

[para 28] As it was not clear to me from its submissions that the Organization is a non-profit organization within the terms of section 56(1)(b) of PIPA, I wrote a letter on December 11, 2023, stating:

> Cabinet has not established criteria that would qualify an [organization] not meeting the terms of section 56(1)(b)(i) to be considered a non-profit organization under section 56(b)(ii). If an organization is incorporated under the *Societies Act*, the *Agricultural Societies Act*, or Part 9 of the *Companies Act*, it is a non-profit organization within the terms of PIPA. An organization

> incorporated under the former *Universities Act* or the current *Post-Secondary Learning Act* is arguably not a non-profit organization under PIPA. As a result, the collection, use, and disclosure provisions of PIPA appear to apply to the Organization in full.

[para 29] In response, the Organization stated:

> We have nothing further to add with respect to the UASU's position that it is a non-profit organization or that the UASU's bylaws are validly enacted subordinate legislation that should exempt the UASU from the application of PIPA.

[para 30] The Organization's evidence establishes that it is a non-profit organization, but not one incorporated under the *Societies Act,* the *Agricultural Societies, Act*, or Part 9 of the *Companies Act.* An organization must meet the terms of section 56(1)(b) in order to qualify as a non-profit organization for the purposes of section 56. As the Organization does not meet the requirements of section 56(1)(b), I find that PIPA applies to the Organization's collection, use, and disclosure of personal information.

If so, does section 20 of PIPA authorize disclosure by the Organization?

[para 31] Section 20 of PIPA sets out an exhaustive list of the circumstances in which an organization may disclose personal information. It states, in part:

> *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:*
>
> *[…]*
>
> *(b) the disclosure of the information is authorized or required by*
>
> *(i) a statute of Alberta or of Canada,*
>
> *(ii) a regulation of Alberta or a regulation of Canada,*
>
> *(iii) a bylaw of a local government body, or*
>
> *(iv) a legislative instrument of a professional regulatory organization;*

[para 32] Section 1(1)(m.1) of PIPA defines the term "regulation of Alberta" when it is used in PIPA. It states:

> *1(1) In this Act,*
>
> *(m.1) "regulation of Alberta" means a regulation as defined in the Regulations Act that is filed under that Act*

[para 33] Section 1(1)(g.2) of PIPA defines the term "local government body" when it is used in PIPA. It states:

> *1(1) In this Act,*
>
> > *(g.2) "local government body" means a local government body as defined in the Freedom of Information and Protection of Privacy Act;*

[para 34] The Organization argued in its initial submissions:

> The disclosure of UASU Council meeting records on the Student Union's website is authorized under the UASU's bylaws which were properly constituted and promulgated under the PSLA [the Post-Secondary Learning Act]. In short, the disclosure of the records of Council proceedings is authorized under PIPA section 20(b)(i). The reference to "a statute of Alberta or of Canada" at section 20(b) must include reference to a statute's subordinate legislation. It should be noted that there is no definition of "statute" in PIPA.

[para 35] In my letter of December 11, 2023, I said:

> I note, too, that the Organization argues that its bylaws are "validly enacted subordinate legislation" as a statute authorizes the Organization to pass bylaws. I agree that there is legislative authority for the Organization to make bylaws; however, for a bylaw to fall within the terms of section 20(b), the bylaw must either comply with the terms of the *Regulations Act* (see section 1(1)(m.1) of PIPA) , or the entity passing the bylaw must be a local government body (see section 1(1)(g.2) of PIPA). The Organization in this case is not a local government body. In addition, it is unclear how the bylaws that have been shown to me authorize posting personal information or personal employee information on the internet.

[para 36] The Organization did not address these points in its subsequent submissions for the inquiry.

[para 37] I am unable to conclude that section 20(b) of PIPA authorized the Organization to post the Complainant's personal information on its website without the Complainant's consent. I am unable to identify any other provision of section 20 that would authorize disclosure without consent.

[para 38] The Organization's bylaws are not regulations under 1(1)(m.1) of PIPA, as the *Regulations Act*, R.S.A. 2000, c. R-14, to which this provision refers, requires regulations to be filed and there is no indication that the relevant bylaws were filed. Further, bylaws of organizations incorporated under private or public Acts are excluded from the definition of 'Regulation' in section 1(2) of the *Regulations Act.*

[para 39] There are organizations whose constating statutes allow them to disclose disciplinary matters. (See, for example Order P2010-019). In this case, the Organization has not established that a statute or regulation gives it the necessary authority to disclose the Complainant's personal information in the manner that it did.

If not, does section 21 of PIPA authorize disclosure by the Organization?

[para 40] Section 21 of PIPA authorizes an organization to disclose personal employee information without consent for certain purposes. It states:

> *21(1) An organization may disclose personal employee information about an individual without the consent of the individual if*
>
> *(a) the information is disclosed solely for the purposes of*
>
> *(i) establishing, managing or terminating an employment or volunteer-work relationship, or*
>
> *(ii) managing a post-employment or post-volunteer-work relationship,*
>
> *between the organization and the individual,*
>
> *(b) it is reasonable to disclose the information for the particular purpose for which it is being disclosed, and*
>
> *(c) in the case of an individual who is a current employee of the organization, the organization has, before disclosing the information, provided the individual with reasonable notification that personal employee information about the individual is going to be disclosed and of the purposes for which the information is going to be disclosed.*
>
> *[…]*
>
> *(3) Nothing in this section is to be construed so as to restrict or otherwise affect an organization's ability to disclose personal information under section 20.*

[para 41] The Organization argued in its initial submissions:

> An alternate disclosure authority is section 21(1). The documents in question were brought forward in the context of a public UASU meeting for the purpose of a non-confidence vote with respect to the Complainant and then for the purpose of determining whether the Complainant could retract his previously submitted resignation from his elected position. To the extent a Councilor is an "employee" under PIPA, these disclosures were for the purpose of managing or terminating that "employment". The organization's bylaws require that for a publicly elected official the "termination" is carried out through a public and democratic vote of non-confidence. This is the foundation of an elected body's institutional credibility. Fundamentally, decisions surrounding their continued status as a member of Students' Council are a matter of public interest to all undergraduate students.
>
> The documents in question now form part of the permanent public record of what transpired between the Complainant as an elected representative and the UASU council, an elected body. The importance of the public nature of the transaction and the subsequent record do not fade over time. In fact, these records arguably become more important over time because they provide precedents for future Councils to consider.

[para 42] Assuming, without deciding, that the Complainant was in an employment relationship with the Organization as contemplated by section 1(1)(j), I note that the Organization does not address the disclosure that is the subject of the Complaint in its arguments in relation to section 21. The complaint is regarding the Organization's decision to post the complaint on its website, where it has been available to the public for twenty years, not the decision to discuss it at a meeting.

[para 43] The Organization's arguments relate to internal discussions of the complaint and the resignation among student union members, which is arguably not a disclosure at all. The term "disclosure" generally refers to the release of information *outside* an organization. An organization, even a large organization such as a union, may discuss personal information when it is necessary to manage employment relationships. Provided the information is discussed internally, the communication of the information is not a disclosure. In this case, the Organization posted the information that is the subject of the complaint on its website, where it is available to any member of the public with internet access, regardless of whether they are members of the Organization or undergraduate students represented by the Organization. While I accept it was likely necessary for members of the Organization to discuss the complaint and the resignation, the Organization has not explained why making the information available on the internet was necessary or done "solely" for the purpose of managing its relationship with the Complainant within the terms of section 21(1)(a) or why it was reasonable for the purposes of section 21(1)(b). The Organization's arguments regarding the precedential authority of the information that is the subject of the complaint support finding that the information was not published on the internet for the *sole* purpose of managing an employment relationship with the Complainant, but for other purposes, such as promoting public accountability.

[para 44] Similarly, in Order P2021-02, the Adjudicator held:

> The Organization states that the Response letter was attached to the email with the Clergy letter to "confirm for the record that no discipline had taken place and that the way forward in addressing the divisive and contentious debate over same sex blessings was by way of generous listening and dialogue" (initial submission at para. 30).
>
> Encouraging future debate and discussion regarding its policies is certainly a valid activity; however, it is not the same as managing the employment relationship with particular employees. If the email recipients were not involved with managing the Complainant's employment, then the Response Letter was not provided to them *for the purpose of* managing the Complainant's employment, as required under sections 18(1)(a) and 21(1)(a). Therefore, those provisions are not met.

[para 45] To conclude, I find that the Organization has not established that section 21 authorized the disclosure that is the subject of the complaint.

ISSUE D: If the information is personal information, is the Complainant deemed to have consented by virtue of the conditions in section 8(2)(a) and (b) of PIPA having been met?

[para 46] Section 8 of PIPA establishes the circumstances in which an individual may be said to consent to collection, use, and disclosure of personal information. It states, in part:

> *8(1) An individual may give his or her consent in writing or orally to the collection, use or disclosure of personal information about the individual.*
>
> *(2) An individual is deemed to consent to the collection, use or disclosure of personal information about the individual by an organization for a particular purpose if*
>
> > *(a) the individual, without actually giving a consent referred to in subsection (1), voluntarily provides the information to the organization for that purpose, and*
> >
> > *(b) it is reasonable that a person would voluntarily provide that information.*
>
> *[…]*

[para 47] The Organization argued in its initial submissions:

> It is notable that the Complainant was in attendance at the Council meeting October 7, 2004, he would have been provided a Copy of the Agenda and Late Additions including all the attachments. The minutes of that meeting do not indicate that the Complainant made any attempt to remove the documents from the Agenda. Notably, the Complainant did not seek to designate the documents as confidential and did not request Council to move "in camera".

[para 48] The Organization takes the position that as the Complainant did not request that the student council discuss the complaint and the application *in camera*, he consented to the disclosure of his personal information on the internet. I am unable to agree with the position.

[para 49] Section 8(2) refers to the situation where an individual voluntarily provides information so that an organization may disclose the information for a particular purpose. In the case before me, there is no evidence to support finding that the Complainant voluntarily provided the information that is the subject of the Complaint to the Organization so that the Organization could post it on its website. Instead, it appears that a complainant created the complaint and that the president of the student council presented it. As a result, it cannot be said that the Complainant provided the information voluntarily to the Organization, given that the Complainant did not provide it at all.

[para 50] I find that the Complainant did not consent to the disclosure of his personal information on the internet by the Organization and cannot be deemed to have consented to it under section 8(2) of PIPA.

ISSUE E: If the information is personal information and the Organization disclosed it, did the Organization disclose information contrary to, or in accordance with, section 19 of PIPA (disclosure for purposes that are reasonable)?

[para 51] Section 19 of PIPA states:

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

[para 52] The Organization argued in its initial submissions:

> The purpose of making this information available, both at the time of the events and now, is for public accountability, transparency and to guide future Councils. Council bylaws and policies dealing with complaints of discrimination, and Council resignations ensue accountability and public access to these records ensures transparency and long-term accountability. This concept is entrenched in elected representative bodies; it is and was codified by the UASU constitution and bylaws before, during and after the tenure of the Complainant as a Councilor.
>
> The continued access to UASU documents is not only "reasonable" in accordance with section 19 of PIPA, it is expected. The UASU is a statutory corporation designed to manage and administer the affairs of 35000 undergraduate students. Under the PSLA [Post-Secondary Learning Act] the UASU must be governed by an elected Council, elected by and from student members. In a democratic society, governance must be transparent and accountable.
>
> Further, there is a broader public interest in the UASU which manages significant assets and student affairs at the largest (public) post-secondary institution in Alberta. If there wasn't a broader public interest at stake, the UASU would not have been incorporated under the PSLA. Instead, it would be society formed under the *Societies Act* or incorporated pursuant to a Private Bill. However, neither of these things happened.
>
> […]
>
> To create a situation where individuals can selectively remove, redact, or censor the public records, particularly by removing factual information that may portray someone in a negative light would be unacceptable to the principles of transparency and accountability. As previously noted, the Gateway publishes articles reporting the events and decisions made by Student Council, a practice which is still in effect. In 2004, individuals maintained personal blogs and shared their opinions of Student Council's decisions online; at least one such blog with posts related to this issue is still publicly available. In the present day, students post their opinions and share and comment on social media posts regarding Council business on Instagram, Discord, Reddit and other platforms. With such a robust interest in the governance body which represents the undergraduate students at the University of Alberta, it is essential that they have access to a complete, reliable and accurate record.

[para 53] The Organization takes the position that because it is incorporated under the *Post-Secondary Learning Act* it must serve a broad public interest and must meet standards of public accountability. For this reason, it asserts it made the complaint available on the internet.

[para 54] Incorporation under the *Post-Secondary Learning Act* does not create a public interest obligation to disclose personal information in circumstances not authorized by PIPA. As discussed above, organizations incorporated under section 9 of the *Societies Act* are not subject to PIPA unless personal information is collected, used, or disclosed for commercial purposes. That the Legislature did not create the Organization as a society under the *Societies Act* means that the Organization has obligations under both the *Post-Secondary Learning Act* and PIPA.

[para 55] While the Organization argues that disclosing the Complainant's personal information on its website served a public interest of accountability, it is not clear on the evidence before me that it did serve this purpose. The Complainant asserts that the complaint was not investigated; the Organization did not dispute that assertion in its submissions. As a result, it is unknown whether or how a public interest was served by disclosure.

[para 56] Clearly, it would be necessary for the Organization to discuss the complaint among its members to determine a course of action regarding the complaint. Both sections 17, which allows the use of personal information without consent for the purpose of an investigation, and section 18, which permits an organization to use personal information to manage a volunteer work relationship, potentially apply. The difficulty for the Organization is that it has posted the Complainant's personal information on the internet, so that it may be viewed by anyone with access to the internet, regardless of whether they are members of the Organization. Disclosing the Complainant's personal information outside the Organization to persons who are not members of the Organization and who are unaffected by the Organization's decisions does not serve an obvious purpose.

[para 57] The Organization also argues that the effect of PIPA is to enable individuals to redact or censor information from public records that is unflattering. The Organization's records are not "public records" given that the Organization is not a public body, although it may make records public in accordance with applicable laws. PIPA does not permit an individual to "censor" public records to remove unflattering information, as the Organization argues. Instead, PIPA requires an organization to obtain the consent of an individual prior to disclosing *any* of an individual's personal information, unless the information is exempt under section 4, or the Organization's purpose in disclosing the information is one enumerated in sections 20, 20.1, or 21.

[para 58] In *Penny Lane Entertainment Group v. Alberta (Information and Privacy Commissioner)*, 2009 ABQB 140 (CanLII), Phillips J. said the following regarding section 11 of PIPA, which requires organizations to collect information for reasonable purposes:

> I therefore conclude that the Privacy Commissioner was making the following point: simply saying that the information was collected for a purpose that is reasonable does not make it so. Proof of the effectiveness of the scanning system is also needed to surpass the threshold of what is deemed to be reasonable. Thus, even if there is a two step analysis in the form proposed by the Applicants, which I hold there is not, the Privacy Commissioner addressed this first step. He held

> that the lack of evidence – as to the deterrent effect of the scanning system on violent behaviour and the enhancement of staff and patron safety (and therefore the inability of the Applicants to establish any reasonable relationship between the two) – meant that, in the final analysis, he was unable to conclude that the Applicants had a reasonable purpose within the meaning of s. 11 when they scanned their patrons' driver's licences. This is the analysis required by s. 11(1).

The Court confirmed that determining whether an organization's purpose in collecting information is reasonable requires evidence as to how the collection serves the stated purpose. Section 19 repeats the language of section 11, but applies to disclosure rather than collection. Given that these provisions are drafted using the same language, it is logical to interpret section 19 of PIPA in the same way that the Court interpreted section 11 of PIPA.

[para 59] The Organization argues that the disclosure served a general duty of transparency and accountability. The Organization has not explained how the disclosure served that purpose with respect to the specific information it disclosed. It is unknown on the evidence before me why posting the complaint about the Complainant on the internet served the general purposes of promoting accountability and transparency of the Organization. It is also unknown how making the information available for almost twenty years continued to serve the purposes of transparency and accountability.

[para 60] For the reasons above, I find that the Organization has not established that it complied with section 19(1) when it posted the Complainant's personal information on its website.

[para 61] Section 19(2), cited above, requires an organization to disclose personal information only to the extent necessary to meet its purposes in disclosing the information. Assuming that the Organization disclosed the Complainant's personal information for the purpose of promoting its own accountability and transparency with respect to the funding it received, as its submissions indicate, it is unknown why it posted the Complainant's personal information on a website accessible to anyone with internet access, regardless of whether the recipient of the information is a member, a student, or an Albertan. For this reason, I find that the Organization has not established that its disclosure complied with section 19(2).

IV. ORDER

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

[para 63] I confirm that the Organization was required by sections 7 and 19 of PIPA to remove the Complainant's personal information from its website.

[para 64] I confirm that it performed a duty required by these provisions when it removed the information from its website.

[para 65] I confirm that the Organization must continue to comply with PIPA in its treatment of the Complainant's personal information in its custody and control.

_____

Teresa Cunningham
Adjudicator
bah