

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER P2025-02

February 19, 2025

COSTCO WHOLESALE CANADA LTD.

Case File Number 021280

Office URL: www.oipc.ab.ca

Summary: The Applicant made an access request under the *Personal Information Protection Act* (PIPA) to Costco Wholesale Canada Ltd. (the Organization) for employee statements made about him.

The Organization withheld all responsive records in their entirety under sections 24(2)(c) (information collected for an investigation or legal proceeding), 24(2)(d) (disclosure will result in information no longer being provided), and 24(3)(b) (personal information of a third party).

The Applicant requested a review into the Organization's response. Following this review, the Applicant requested an inquiry into the Organization's decisions to withhold the information.

The Adjudicator found that the records contained the Applicant's personal information, but that his personal information was intertwined with personal information of third parties such that the Organization was required to withhold it under section 24(3)(b).

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

Authorities Cited: AB: Orders P2006-005, P2007-002, P2008-006, P2008-010, P2012-09, P2013-06, P2015-01, P2015-05, P2016-01

I. BACKGROUND

[para 1] The Applicant was an employee of Costco Wholesale Canada Ltd. (the Organization). The Organization states that in 2021, a Manager at a specific location was verbally informed by Employee A that the Applicant had engaged in inappropriate conduct involving Employee A.

[para 2] The Organization states that the Manager asked Employee A to provide a written statement, and decided to undertake an investigation.

[para 3] The following day, the Manager spoke with Employee B, who had witnessed some of the conduct Employee A had complained of. The Manager asked Employee B to also provide a written statement.

[para 4] The Applicant made an access request to the Organization under the *Personal Information Protection Act* (PIPA) for these statements made about him.

[para 5] The Organization withheld all responsive records in their entirety under sections 24(2)(c) (information collected for an investigation), 24(2)(d) (disclosure will result in information no longer being provided) and 24(3)(b) (personal information of a third party).

[para 6] The Applicant requested a review into the Organization's response. Following this review, the Applicant requested an inquiry into the Organization's decisions to withhold the information.

[para 7] In his request for inquiry, the Applicant raised new concerns regarding the Organization's collection, use, and disclosure of his personal information. These concerns were not raised in the Applicant's initial request for review or during the review; the review addressed only the Organization's response to the Applicant's access request. Therefore, these new concerns will not be addressed in this inquiry. The Applicant was informed of this prior to the inquiry, and again in the Notice of Inquiry. The Applicant was also informed that he may submit a new complaint regarding these concerns.

II. INFORMATION AT ISSUE

[para 8] The information at issue consists of two employee statements that were not provided to the Applicant.

III. ISSUES

[para 9] The Notice of Inquiry, dated July 12, 2023, states the issues for inquiry as the following:

1. Is the information requested by the Applicant his personal information as defined in section 1(1)(k) of the Act?

If yes,

2. Did the Organization properly apply section 24(3)(b) (information revealing personal information about another individual) to the records withheld from the Applicant?
3. Did the Organization properly apply section 24(2)(c) information collected for an investigation or legal proceeding) to the records withheld from the Applicant?
4. Did the Organization properly apply section 24(2)(d) (will result in information no longer being provided) to the records withheld from the Applicant?

IV. DISCUSSION OF ISSUES

1. Is the information requested by the Applicant his personal information as defined in section 1(1)(k) of the Act?

[para 10] Under PIPA, an applicant has a right of access only to their own personal information.

[para 11] Section 24(1) and (1.1) of the Act require an organization to provide access to an applicant's personal information; these provisions state:

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

(b) to provide the individual with information about the use or disclosure of personal information about the individual.

(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 12] In Order P2006-005, former Commissioner Work stated (at paras. 46-47, 50):

In Order P2006-004, I considered the meaning of "personal information about an individual" within the meaning of the Act:

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

This reasoning applies equally to an individual's work, which may be associated with an individual, but is not necessarily about the individual who performed the work.

...

I agree with the Organization's position that the "work product" or records produced by an employee in the course of employment is generally not the personal information of the employee. Pipeline reports, asset allocation reports, client agreements, tapes of calls, customer satisfaction and referrals are records created by employees as a part of their employment duties. These records are not about the employee as an individual, but about the task at hand.

[para 13] Several past Orders have further discussed what is and is not personal information in the employment context. Information about employees acting in the course of their job duties is normally not considered information about those individuals; however, there may be circumstances that give that information a "personal dimension", such as disciplinary issues or performance evaluations (see Orders P2012-09, P2013-06, P2015-01).

[para 14] In Order P2015-05, the Director of Adjudication considered an access request made by a former employee to an Organization for his personnel file. She found (at paras. 31-33):

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 other 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.)

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 the 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.

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 situation, 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 15] In Order P2008-010, the Director of Adjudication considered whether information relating to officers performing their job duties had a personal dimension when it was collected in a database that was created for the purpose of collecting and disseminating information about members of the EPS who had allegedly used force against individuals. She concluded (at paras. 30-31):

The very fact of what the officer did is not their personal information – it is their discharge of their work and of their duties to the public as a member of a public institution. This could be said of any records that reveal nothing other than what was done – for example, a video recording of an incident, or a factual account from an observer.

However, if the information that is entered is a record or report of a disciplinary process, it does not come in pure form – it comes associated with personal information as well. Information in the database that reveals what was done by the officer but that at the same time reveals something that is personal to the officer – for example, the fact that a disciplinary proceeding was conducted and that particular conclusions were drawn, or that a penalty was imposed (which might speak to the conduct itself insofar as it shows how egregious the person who heard direct evidence saw it to be), has both non-personal and personal aspects which are inextricably interwoven. Since the personal information revealing what was done cannot be separated from the pure fact of what was done, such information must be regarded in totality as having a dual – non-personal as well as personal – character. A similar duality might exist in relation to an entry that both records what was done or allegedly done by an officer, and that has a personal aspect for some other reason, for example, that it was highly publicized.

[para 16] Where the information at issue is contained in a statement involving an individual’s opinion of someone else, that opinion may be the personal information of both the individual the opinion is about and the individual giving the opinion (Orders P2007-002, P2008-006).

Parties’ arguments

[para 17] The Organization argues that the statements do not contain the Applicant’s personal information. It cites Order P2015-05, reproduced in part above, in support of this argument, stating that the records contain “only information ‘generated in consequence of a complaint’ about the Applicant’s behaviour. Therefore, they do not contain the Applicant’s personal information.”

[para 18] The Organization also cites Order P2016-01, in which the adjudicator cited Order F2015-05 and found (at para. 14):

I agree with the reasoning of the Director of Adjudication in the foregoing excerpt. Applying this reasoning to the case before me, I find that the information he indicates is lacking from the Organization’s response, and which is detailed in the background above, that is, complaints against, or involving, the Applicant, witness statements, the respondent’s statement, an investigator’s notes, minutes, emails between management and human resources regarding the Applicant’s performance, a proposed performance plan and emails containing references to the Applicant and meeting minutes documenting the Organization’s decision to terminate the Applicant, do not constitute his personal information as the information is not “about the Applicant” but is about problems that had arisen in the Organization and the solutions the Organization was considering, and did consider, to address them.

[para 19] The Organization argues that Employee A's and B's statements contain their versions of events and therefore contain the Employees' personal information, not the Applicant's. The Organization cites Order P2015-05, wherein the Director of Adjudication noted that an individual's version of events is often their personal information (at para. 26).

[para 20] The Applicant did not directly address this issue. The Applicant's submission provides some background information about the incidents that led to the statements, as well as arguments regarding the Organization's collection, use, and disclosure of his personal information. As discussed above, the latter concerns are not at issue in this inquiry.

Application to the records at issue

[para 21] The records at issue consists of two written statements made by two third parties, that relate to conduct of the Applicant. Specifically, both individuals allege that the Applicant has engaged in inappropriate conduct that either directly affected these individuals or that the individuals witnessed.

[para 22] The Organization has argued that Employee A's and B's statements contain their personal information. I agree that they do. However, the Organization seems to argue that because the statements contain personal information of third parties, the statements cannot also contain personal information of the Applicant. This is not the case. As noted above, past Orders have found that information can be about more than one individual. Therefore, the statements of Employee A and B can contain the Applicant's personal information as well as their own.

[para 23] Much of the information in each statement is not about the Applicant at all. However, Employee A's and B's opinions of the Applicant, and retelling of events involving the Applicant are the Applicant's personal information as well as their own. I find that some information in both records is the Applicant's personal information.

2. Did the Organization properly apply section 24(3)(b) (information revealing personal information about another individual) to the records withheld from the Applicant?

[para 24] This provision requires the Organization to refuse access to information about third party individuals. It states:

24(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 25] The Organization argues that the records contain information about Employee A and Employee B.

[para 26] As discussed above, opinions about the Applicant can be the personal information of the Applicant and the personal information of the individual providing the opinion.

[para 27] In some cases, the individual providing the opinion is doing so in a professional capacity, such that their opinion does not have a personal dimension. Some examples where this may be the case include a medical professional providing an opinion in the course of performing their job duties; or a manager providing feedback as part of an employee's performance evaluation.

[para 28] In this case, it is clear from the content of the statements of Employee A and B that they were both given in the Employees' personal capacities. Neither Employee A nor Employee B were in a position to provide a professional opinion about the Applicant's conduct at work. Further, much of the information also relates to conduct that does not involve the Employees' or the Applicant's work duties.

[para 29] In Order P2007-002, the Director of Adjudication discussed a situation in which responsive information consists of statements made by one individual about another are intertwined. She found (at para. 55):

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

[para 30] I agree with this analysis. In this case, the personal information of the Applicant appearing in the statements of Employee A and Employee B is intertwined with the personal information of A and B in a manner such that the Applicant's personal information cannot be separated out. In other words, the personal information of the Applicant that appears in the statements cannot be provided to him without also disclosing the personal information of Employee A or B.

[para 31] Given this, I find that section 24(3)(b) requires the Organization to continue to withhold the statements from the Applicant in their entirety.

3. Did the Organization properly apply section 24(2)(c) (information collected for an investigation or legal proceeding) to certain requested records or parts thereof?

[para 32] Given my finding regarding section 24(3)(b), I do not need to consider whether this exception also applies.

4. Did the Organization properly apply section 24(2)(d) (will result in information no longer being provided) to the records withheld from the Applicant?

[para 33] Given my finding regarding section 24(3)(b), I do not need to consider whether this exception also applies.

V. ORDER

[para 34] I make this Order under section 52 of the Act.

[para 35] I find that the section 24(3)(b) applies to all of the information in the records at issue, and that the Organization is required to continue to withhold this information.

Amanda Swanek
Adjudicator