ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER PIPA2026-01

February 10, 2026

ALBERTA SCHOOL EMPLOYEE BENEFIT PLAN

Case File Number 010994

Office URL: www.oipc.ab.ca

Summary: The Applicant made an access request under the *Personal Information Protection Act* (PIPA) to the Alberta School Employee Benefit Plan (the Organization) for records relating to her disability claim. The Organization responded to the Applicant's requests by providing some information and withholding some information under various exceptions. The Applicant sought a review of the Organization's response.

The Applicant had also asked that the Organization destroy specific personal information of the Applicant, which the Applicant claimed was collected without authority. The Organization refused and the Applicant requested a review of this decision, characterizing the request to destroy the information as a request for correction of personal information. The inquiry also considered whether the Organization had control of records maintained by independent medical examiners, such that it was required to obtain records in their custody to provide to the Applicant.

The Adjudicator found that the Organization did not have control over records relating to independent medical examinations in the custody of the examiners.

The Adjudicator found that the Organization was authorized or required to withhold information in the records as privileged (under section 24(2)(a)) and records containing third party personal information (under section 24(3)(b)). The Adjudicator found that the Organization was not authorized to withhold information collected for an investigation (under section 24(2)(c)), but also found that some information withheld under that provision was not the Applicant's personal information that could be requested under the Act. The Adjudicator ordered the Organization to disclose to the Applicant the information withheld under section 24(2)(c) that comprised the Applicant's personal information.

The Adjudicator found that the Organization was not required to destroy the Applicant's personal information as requested.

Statutes Cited: AB: *Personal Information Protection Act*, S.A. 2003, c. P-6.5, ss. 1, 24, 27, 52

Authorities Cited: AB: Orders F2004-003, F2009-030, F2010-022, F2015-22, F2018-01, F2018-37, P2015-08, P2016-01, P2017-02, P2022-06

Cases Cited: *Blood Tribe v. Canada (Attorney General)*, 2010 ABCA 112 (CanLII), *Canada v. Solosky*, [1980] 1 S.C.R. 821, *Edmonton Police Service v. Alberta (Information and Privacy Commissioner)*, 2020 ABQB 10

I. BACKGROUND

[para 1] The Applicant made an access request under the *Personal Information Protection Act* (PIPA) to the Alberta School Employee Benefit Plan (the Organization) for a records relating to her disability claim. Specifically, the Applicant requested

> IME report revisions, medical reports, adjudication notes, records of all forms of communication with all individuals and organizations concerning me; including consultants, doctors and medical practitioners, Independent Medical Examiners, lawyers, all Alberta Teachers' Association staff and members involved and [a specified School District].

The Organization responded to the Applicant's requests by providing some information and withholding some information under sections 24(2)(a) (legal privilege), 24(2)(c) (information collected for an investigation or legal proceeding), and 24(3)(b) (third party personal information).

[para 2] The Applicant had also asked that the Organization destroy specific personal information of the Applicant, which the Applicant claimed was collected without authority. The Organization refused and the Applicant requested a review of this decision, characterizing the request to destroy the information as a request for correction of personal information.

[para 3] The Applicant's request for review also raised concerns about the Organization's collection, use, and disclosure of personal information; these concerns are the subject of a different inquiry.

[para 4] The Applicant requested a review of the Organization's response. The Commissioner authorized a Senior Information and Privacy Manager to attempt to settle the matter. Following this review, the Applicant requested an inquiry.

[para 5] The Applicant has made lengthy submissions to the inquiry, in addition to the extensive materials provided with their request for review and request for inquiry. I have reviewed all of these materials but will address only the arguments that are directly relevant to my findings.

II. INFORMATION AT ISSUE

[para 6] The information at issue consists of information withheld under sections 24(2)(a), 24(2)(c) and 24(3)(b) of the Act. The Organization separated the records into several packages:

- Package AR2018-22 contains records numbered from 1 to 5016; the Organization applied sections 24(2)(a) (legal privilege) and 24(3)(b) (third party personal information) to some information in these records.
- Package AR2019-22 contains three different bundles of records. One bundle, numbered from 1 to 396, was provided to the Applicant without redactions. Another bundle, numbered from 1-22, was withheld in its entirety under section 24(2)(a) (legal privilege). A third bundle, numbered from 1-9, was withheld in its entirety under section 24(2)(c) (information collected for an investigation or legal proceeding).

III. ISSUES

[para 7] The Notice of Inquiry, dated October 28, 2024, issued by the adjudicator previously assigned to this file, states the issues for inquiry as follows:

1. Did the Organization have a duty under section 24(1.1) of PIPA to search for responsive personal information to the Applicant's access requests to the Organization, which was held by Independent Medical Offices that were contracted by the Organization?

2. If the answer to the first question is yes, did the Organization conduct an adequate search for responsive personal information as required under section 27(1)(a) of PIPA?

3. Did the Organization properly apply section 24(2)(a) of PIPA (legal privilege) to withhold information in the records?

4. Did the Organization properly apply section 24(2)(c) of PIPA (information collected for an investigation or legal proceeding) to withhold information in the records?

5. Did the Organization properly apply section 24(3)(b) of PIPA (information would reveal personal information about another individual) to withhold information in the records?

6. Does section 25(1) permit an individual to request that an organization destroy personal information the individual believes was collected in contravention of PIPA?

7. If the answer to the sixth question is yes, did the Organization respond in accordance with section 25(1) of PIPA?

IV. DISCUSSION OF ISSUES

1. Did the Organization have a duty under section 24(1.1) of PIPA to search for responsive personal information to the Applicant's access requests to the Organization, which was held by Independent Medical Offices that were contracted by the Organization?

[para 8] 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 9] With respect to this issue, the Notice of Inquiry states:

> *This issue will consider whether the Organization had a duty to ask the Independent Medical Offices it contracted, to search for responsive records to the Applicant's two access requests to the Organization.*
>
> *With her initial submission, the Applicant is asked to provide copies of the access request(s) she made to the Independent Medical Offices contracted by the Organization, and the response(s) she received from these Offices.*
>
> *In its initial submission, the Organization is to advise whether the Independent Medical Offices the Applicant made access requests to were contracted by the Organization. If so, the Organization is to provide arguments as to whether any personal information about the Applicant collected by Independent Medical Offices contracted by the Organization, was in the Organization's custody or under its control.* The Organization should provide any provision in its contract with the Independent Medical Office that supports its position.

[para 10] With their initial submission, the Applicant provided a copy of the access request they made to Dr. S, dated May 1, 2018, and to an organization (VMA) that appears to conduct independent medical evaluations, dated May 1, 2018. There does not seem to be a copy of a response to either request in the Applicant's submission, so I do not know the content of the response the Applicant received either from Dr. S or VMA.

[para 11] The question is whether the Organization has custody or control of the records created and/or maintained by Dr. S and VMA such that the Organization was obliged to seek those records in responding to the Applicant's access request.

[para 12] Custody generally refers to physical possession of the records. The Organization has conducted a search and provided the Applicant with access to records in its custody, subject to exceptions. The parties' submissions focus on whether the Organization has *control* of records relating to the IMEs that are in the possession of Dr. S or VMA, such that the Organization ought to have obtained those records and processed them when responding to the Applicant's request. Therefore, the discussion of this issue will focus on whether the Organization had control of the relevant records.

[para 13] Similar situations have been considered under the *Freedom of Information and Protection of Privacy Act* (FOIP Act) in which a public body has been found not to have control over records created by a third party under a contract for services for managing Long Term Disability Income plans (LTDI plans), and for employee health services provided by a third party clinic. In Order F2009-030, the adjudicator stated (at para. 66):

> In most, if not almost all, cases where a public body contracts with a third party service provider, the public body retains control over the records relating to the services, the FOIP Act therefore applies, and the public body cannot contract out of its obligation regarding access requests under the Act. However, the present matter is an exception where, for legitimate reasons, the Public Body does not retain control over the records held by Great-West Life. It is not a matter of the Public Body contracting out of custody and control; it does not have custody or control in the first place. While the *Guide* cited by the Applicant makes it clear that a public body normally retains control over records relating to services provided by a third party, and that the public body should therefore ensure that its control is reflected in the contract, the *Guide* does not purport to say that this is universally true. In the context of contracting for service delivery, it notes (at page 13) that "the outsourcing agreement should state *whether* the public body maintains control over the records".

[para 14] Similarly, in F2010-022, the adjudicator stated (at paras. 27-28):

> In this case, the organization that provides services through the Wellness Centre is Shepell-fgi, a division of HRCP Inc. In turn, the doctor is apparently a sub-contractor, as the Applicant indicates that he was contracted by the Wellness Centre to solicit information from another care provider with respect to her medical situation. The "Independent Contractor Agreement", signed September 2008 between The Governors of the University of Calgary and Shepell-fgi, indicates (at pages 21) that Shepell-fgi administers

> the Employee Assistance Program, which provides eligible users with professional counseling and information services. The mandate of the Wellness Centre is, among other things, to provide assessment, counseling, claims management, referral, rehabilitation and re-integration services for staff members experiencing personal difficulties, illness or injury (page 22 of the Agreement). The Agreement emphasizes that Shepell-fgi is independent of the Public Body (article 2.7) and that all counseling records and case notes related to employees are its property and are confidential (article 5.3(g), as well as article C.9 of "Appendix C" to the Agreement).
>
> As in Order F2009-030, I find that there is a legitimate arm's length arrangement between the Public Body and Shepell-fgi, due to the nature of the services provided by Shepell-fgi and the reasonable requirement that information held by the Wellness Centre operated by Shepell-fgi be kept confidential and private, including vis-à-vis the Public Body, which is the employer of the individuals who use the services of the Wellness Centre.

[para 15] Although these analyses relate to situations under the FOIP Act, I find that they are also relevant to this situation.

[para 16] Past Orders have set out factors to help determine whether a public body has custody or control of requested records under the FOIP Act. Order F2018-37 states (at paras. 19-21):

> The phrase “custody or control” refers to an enforceable right of an entity to possess a record or to obtain or demand it, if the record is not in its immediate possession. “Custody or control” also imparts the notion that a public body has duties and powers in relation to a record, such as the duty to preserve or maintain records, or the authority to destroy them.
>
> Previous orders of this office have considered a non-exhaustive list of factors compiled from previous orders of this office and across Canada when answering the question of whether a public body has custody or control of a record. In Order F2008-023, following previous orders of this office, the Adjudicator set out and considered the following factors to determine whether a public body had custody or control over records:
>
> - Was the record created by an officer or employee of the public body?
> - What use did the creator intend to make of the record?
> - Does the public body have possession of the record either because it has been voluntarily provided by the creator or pursuant to a mandatory statutory or employment requirement?
> - If the public body does not have possession of the record, is it being held by an officer or employee of the public body for the purposes of his or her duties as an officer or employee?
> - Does the public body have a right to possession of the record?
> - Does the content of the record relate to the public body’s mandate and functions?
> - Does the public body have the authority to regulate the record’s use?
> - To what extent has the record been relied upon by the public body?
> - How closely is the record integrated with other records held by the public body?
> - Does the public body have the authority to dispose of the record?
>
> Not every factor is determinative, or relevant, to the issues of custody or control in a given case. …

[para 17] These criteria have also been applied under PIPA (see Order P2015-08).

Organization's arguments

[para 18] The Organization states that it does not have a formal contract with Dr. S setting out terms under which the medical assessment is to be provided. With respect to the Applicant, the Organization states that it wrote to Dr. S to request an assessment, and that Dr. S provided their report to the Organization. The Organization states that it provided the Applicant with a copy of Dr. S's report and all communications it had with Dr. S or the doctor's employees.

[para 19] The Organization has made arguments regarding the factors for determining custody or control. It states that Dr. S was retained by the Organization to provide an independent medical assessment. It further states (initial submission, at pages 2-3):

- The existence of and exact nature of all records created by Dr. S is not known by the Organization. It is assumed that Dr. S created records prior to the appointment, and took notes during the appointment with the Applicant, for the purpose of providing the Organization with a medical report detailing his opinion. However, such records were never received by the Organization.
- The Organization has possession of communications with Dr. S's office generated for the purposes of arranging the psychiatric assessment and a fax from Dr. S dated September 5, 2016, containing Dr. S's report dated September 3, 2016, and invoice dated September 5, 2016.
- The Organization does not have possession of any other records created by Dr. S or his employees for the purposes of completing the psychiatric assessment.
- The Organization does not have the right to possess any other records created by Dr. S or his employees for the purposes of providing the psychiatric report, other than the resulting psychiatric report and invoice. There is no contract providing the Organization with the right to possess such records.
- Any other records created by Dr. S or his employees, other than the report, do not relate to the Organization's mandate and functions.
- The only record created by Dr. S or his employees relied upon by the Organization is the report dated September 3, 2016, which was provided to the Applicant, and the related invoice for services rendered.
- Any records created by Dr. S or his employees other than communications to arrange the psychiatric assessment, the psychiatric report, and invoice have not been integrated with other records held by the Organization.
- The Organization has no authority to dispose of any records created by and in the possession of Dr. S or his employees.
- The Organization does not have authority to regulate use of records in the possession of Dr. S or his employees.

[para 20] The Organization argued that the analysis in Order F2010-022, cited above, applies here (initial submission, at page 4, footnotes omitted):

> The circumstances in Order F2010-022 are informative in the present case. Although this concerned an access request under FOIP, custody and control are determined using similar criteria in the context of PIPA. In that case, the applicant was employed by a public body and attended a Wellness Centre which was contracted by that public body to provide counselling under an employee assistance program. The applicant made a FOIP request for the records of the Wellness Centre.
>
> The adjudicator found that the public body did not have custody or control of the Wellness Centre's records. The adjudicator noted the arms-length relationship between the public body and the Wellness Centre. The adjudicator considered, among other things: the use of the records was for the independent purposes of the Wellness Centre, the records were not integrated with other records of the public body, and the public body did not have the authority to possess, regulate, or dispose of the records.
>
> Similarly, in the present case, the Organization has no authority to possess, regulate or dispose of the records at issue and the records were not integrated with other records of the Organization. Further, the relationship between Dr. S. and the Organization is arguably even more independent than that of the Wellness Center and the public body in F2010-022, as Dr. S was retained by the Organization on an *ad hoc* basis and there is no ongoing contract for the provision of services between the Organization and Dr. S.

Applicant's arguments

[para 21] The Applicant provided copies of invoices to the Organization from Dr. S and the VMA for the IMEs conducted by each. The Applicant argues that as the services were paid for by the Organization, the responsive records are under the Organization's custody or control.

[para 22] The Applicant argued that Order F2010-022 can be distinguished from the present case because the Wellness Centre in Order F2010-022 "operated independently with its own clinical practice" whereas "Dr. S's role was created specifically for the Organization's needs…". The Applicant argues that the ad hoc nature of the Organization's use of Dr. S's services means that the Organization has control over the records because the Organization initiates the engagement, the medical assessments are created at the Organization's request, and the Organization maintains control over the engagement terms and assessment scope and requirements.

Analysis

[para 23] As stated above, the focus of this issue is whether the Organization has control of records in the possession of Dr. S or VMA relating to IMEs of the Applicant.

[para 24] Unlike the situation in Order F2010-022, there is no service agreement between the Organization and Dr. S. However, the type of service provided by Dr. S and the Organization is similar to the type of service provided in Order F2010-022 and like the adjudicator in that Order, I find that there is a legitimate reason for the relationship between the Organization and Dr. S to be arms-length. To complete a medical assessment, Dr. S may have had to collect, compile, and/or create documents that contain sensitive medical information of the Applicant. The Organization needed only a report of Dr. S's

findings, not all of the sensitive medical information underlying those findings. In my view, the Organization has a right to the report it requested and has control over that report but not the underlying documentation that may have been collected or created in relation to that report.

[para 25] There is no indication that the Organization has any authority over the medical or other documentation collected or created by Dr. S in preparing that report. I agree that the documents collected or created by Dr. S or their staff do not relate to the Organization's mandates. The Organization provides benefits, including disability benefits. To do so, the Organization may require medical assessments to be conducted; however, the Organization does not itself provide or conduct medical assessments.

[para 26] With respect to the Applicant's argument that Order F2010-022 is distinguishable from the case here on the basis that the Wellness Centre operates independently with its own clinical practice, Dr. S also appear to operate their own practice. The invoice provided by the Applicant indicates that Dr. S has an incorporated practice that the Organization contracts with. The fact that the Organization decides when to request the services of Dr. S does not indicate that the Organization has control over all documentation relating to the contracted service.

[para 27] Neither the Applicant nor the Organization has referred to VMA in their submissions. The copy of the invoice of VMA made out to the Organization for an IME of the Applicant makes it clear that VMA is an organization separate from the Organization. Nothing before me indicates that the Organization would have control over records in VMA's possession that are responsive to the Applicant's request to the Organization. Therefore, my finding with respect to Dr. S also applies to VMA.

[para 28] In conclusion, I find that the Organization does not have control over all records related to the requested IMEs in the possession of Dr. S or VMA. Therefore, the Organization was not obligated to request responsive records from Dr. S or VMA.

2. If the answer to the first question is yes, did the Organization conduct an adequate search for responsive personal information as required under section 27(1)(a) of PIPA?

[para 29] As the answer to issue #1 is 'no', I do not need to consider this issue.

3. Did the Organization properly apply section 24(2)(a) of PIPA (legal privilege) to withhold information in the records?

[para 30] The Organization withheld information in several pages of records in package AR2018-82 under section 24(2)(a), citing solicitor-client privilege.

[para 31] The Organization withheld the bundle of 22 pages of records in package AR2019-22 under section 24(2)(a), citing litigation privilege.

[para 32] Section 24(2)(a) states:

> *24(2) An organization may refuse to provide access to personal information under subsection (1) if*
>
> *(a) the information is protected by any legal privilege;*

Solicitor-client privilege

[para 33] The test to establish whether communications are subject to solicitor-client privilege is set out by the Supreme Court of Canada in *Canada v. Solosky*, [1980] 1 S.C.R. 821. The Court said:

> … privilege can only be claimed document by document, with each document being required to meet the criteria for the privilege--(i) a communication between solicitor and client; (ii) which entails the seeking or giving of legal advice; and (iii) which is intended to be confidential by the parties.

[para 34] The requirements of this privilege are met if information is a communication between a solicitor and a client, which was made for the purpose of seeking or giving of legal advice and intended to be kept confidential by the parties.

[para 35] Solicitor-client privilege can also extend past the immediate communication between a solicitor and client.

[para 36] In Order F2015-22, the adjudicator summarized the discussion of a continuum of communication in *Blood Tribe v. Canada (Attorney General)*, 2010 ABCA 112 (CanLII); the adjudicator concluded that "communications between a solicitor and a client that are part of the necessary exchange of information between them so that legal advice may be provided, but which do not actually contain legal advice, may fall within the scope of solicitor-client privilege" (at para. 76). I believe this is a well-established extension of the privilege.

[para 37] In its submission, the Organization states that it sought legal advice in administering the Applicant's disability claim due to significant complexities in the file, as well as allegations of discrimination made by the Applicant. With its initial submission, the Organization provided an affidavit sworn by an employee of the Organization, with additional descriptions of the information withheld citing solicitor-client privilege. All of the information withheld citing solicitor-client privilege appear in emails between employees of the Organization and external counsel. The records contain many duplicates, such that one email may appear several times. In many cases, the Organization has severed only portions of the emails. Only a few emails were withheld in their entirety: on pages 1804 (duplicated at pages 1858-59, 1882-83), pages 3075-76 (duplicated at pages 3088-89, 3100, 3143-44, 3159-60, 3172, 3185-86), and at pages 4454-55 (duplicated at pages 4779-80 (though the record incorrectly identified 24(3)(a) as the relevant exception)).

[para 38] The Applicant argues that the Organization's claim of solicitor-client privilege is "a systematic attempt to shield routine business communications by unnecessarily involving legal counsel in standard operations." The Applicant argues that there was no active litigation at the relevant time, no genuine legal controversy that would require counsel involvement.

[para 39] The context of the redacted information and the Organization's affidavit makes it clear that the Organization had sought advice from external counsel regarding how to proceed with the Applicant's claim or respond to specific communications from the Applicant. In some instances, the Organization disclosed the question that was being asked of counsel and redacted only counsel's response. I am satisfied that the first two parts of the *Solosky* test are met.

[para 40] With respect to the third part of the test, that the communications were intended to remain confidential, confidentiality can be implied by the circumstances of the communication (here, a communication between solicitor and client involving obtaining legal advice), it does not need to be express (see Orders F2004-003 at para 30, F2018-01 at para. 30, P2017-02, at para. 24). Given the subject matter of the communications and the context in which they were made, I accept that confidentiality was implied.

[para 41] I find that the Organization is authorized to withhold the information over which solicitor-client privilege is claimed in the records responsive to request AR2018-82.

[para 42] With respect to the exercise of discretion as to whether to withhold the records subject to privilege, as noted by the adjudicator in Order P2022-06 at paragraphs 61 – 62:

> Section 24(2) of PIPA is a discretionary provision; this means that even if the exception applies to requested information, an organization must properly exercise its discretion to determine whether the information should nevertheless be disclosed to the applicant.
>
> However, past Orders of this Office have found that once solicitor-client privilege has been established, withholding the information is usually justified for that reason alone (see Orders F2007-014, F2010-007, F2010-036, and F2012-08 citing *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 2010 SCC 23 (CanLII)).

[para 43] Furthermore, in *Edmonton Police Service v. Alberta (Information and Privacy Commissioner)*, 2020 ABQB 10, Justice Renke stated at paragraphs 74 and 118:

> [74] In my opinion, a public body like EPS is required to establish its claim of solicitor-client privilege, but only to the extent required by the Court of Appeal in *Canadian Natural Resources v ShawCor Ltd.*, 2014 ABCA 289 – and no farther, Satisfaction of the *CNRL v. ShawCor* standard suffices for civil litigation and no higher standard should be imposed in the *FOIPPA* context. Further, even if s. 27(2) does not apply and solicitor-client privilege remains discretionary, to establish the privilege is to establish the grounds for

> relying on the privilege. The existence of the privilege is the warrant for reliance on the privilege. No additional IPC scrutiny of discretion concerning solicitor-client privilege claims is warranted.
>
> . . .
>
> [118] The Adjudicator, in my view, correctly approached this issue. The Adjudicator wrote in F2013-13 at para 238 as follows: "a public body need not explain why it has exercised discretion to withhold information once it has been established that information is subject to solicitor-client privilege, given the near absolute nature of this privilege . . ."

[para 44] The Court's comments regarding the exercise of discretion by a public body where solicitor-client privilege is asserted under the FOIP Act apply equally to the exercise of discretion by an organization where solicitor-client privilege is asserted under PIPA.

[para 45] As I have found that the Organization properly asserted solicitor-client privilege over the relevant information, I conclude that the Public Body properly exercised its discretion to withhold the information it withheld under section 24(2)(a).

Litigation privilege

[para 46] The Organization withheld the bundle of 22 pages of records in package AR2019-22 under section 24(2)(a), citing litigation privilege.

[para 47] By letters dated December 3, 2025 and January 20, 2026, I asked the Organization several questions relating to its claim of litigation privilege over the records in pages 1-22. In response to my January 20 letter, the Organization stated that it would waive the claimed privilege and provide the pages to the Applicant in full. The Organization and Applicant have confirmed that these records have been provided to the Applicant.

[para 48] Given this, the Organization's claim of litigation privilege under section 24(2)(a) is no longer an issue that needs to be decided.

4. Did the Organization properly apply section 24(2)(c) of PIPA (information collected for an investigation or legal proceeding) to withhold information in the records?

[para 49] The Organization applied section 24(2)(c) to withhold the bundle of 9 pages of records in package AR2019-22 in their entirety. This provision states:

> *24(2) An organization may refuse to provide access to personal information under subsection (1) if*
>
> *…*
>
> *(c) the information was collected for an investigation or legal proceeding;*

…

[para 50] Section 24(2)(c) of the Act permits an organization to withhold personal information that was collected for an investigation or legal proceeding. Section 1(1)(f) of PIPA defines "investigation", in part, as follows:

> *1(1)(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 51] "Legal proceeding" is defined at section 1(1)(g) of the Act as:

> *(g) "legal proceeding" means a civil, criminal or administrative proceeding that is related to*
>
> *(i) a breach of an agreement,*
>
> *(ii) a contravention of an enactment of Alberta or Canada or of another province of Canada, or*
>
> *(iii) a remedy available at law;*

[para 52] The Organization states that the information in pages 1-9 relate to a complaint made by the Applicant regarding the Organization's collection, use, and disclosure of her personal information in a particular way. The Organization states:

> To adequately respond to the allegations made by the Applicant, it was imperative for the Claims Facilitator to consult with the Director and Privacy Officer. This consultation was necessary to ensure a comprehensive understanding of the situation, to gather relevant information, and to formulate an appropriate response that aligns with the Organization's policies and legal obligations.

[para 53] The Applicant argues that the Organization did not conduct a proper investigation into her complaint.

Analysis

[para 54] The emails comprising pages 1-4, except the very first email on page 1, and 7-9 were either sent to or by the Applicant, in the course of administering her benefits. In my view, they were not collected for an investigation within the terms of section 24(2)(c). Even if these emails were later used or considered in an investigation, this is not sufficient to meet the terms of the provision; any information collected by an organization might later be used in an unrelated investigation. This exception to access applies only where the information was collected for that investigation. As I find that section 24(2)(c) does not apply and as this information is the Applicant's personal information under PIPA, I will order the Organization to provide this information to the Applicant.

[para 55] With respect to the first email on page 1, and the remaining emails on pages 5-6, these emails relate to the Organization's internal response to the Applicant's complaint. The Organization has referred to these emails as a 'consultation' with the Organization's privacy officer. A consultation is not the same as an investigation and from my review of the records, these emails do not fit within the scope of section 24(2)(c). However, for the following reasons, I will not order the Organization to provide this information to the Applicant.

[para 56] Past Orders of this office have distinguished between information "about the applicant" and information that merely relates to the applicant under PIPA. Order P2016-01 summarizes the approach (at paras. 11-14):

> In Order P2006-005, former Commissioner Work commented on the purpose of the access provisions in PIPA, which he contrasted with the access provisions in freedom of information legislation:
>
> > Because a primary purpose of FOIPPA is to provide access to information, access requests are interpreted broadly. In contrast, [PIPA] is intended to protect personal information and to govern the purposes for which an organization may collect, use and disclose personal information. Access requests under [PIPA] are therefore not given a broad interpretation as they are under [the FOIP Act], since the right to make an access request under [PIPA] is intended only to enable an individual to determine whether his or her personal information is being collected, used and disclosed by an organization in accordance with [PIPA]. [PIPA] does not authorize an individual to request information other than the individual's own personal information.
>
> The records the Applicant has requested may contain some personal data about him, such as his name and the previous and current status of his employment with the Organization. However, the records would, by their description, also contain information merely relating to him, or alternatively, information that is not about him and does not relate to him. Information about the Organization's decisions to handle complaints relating to the Applicant in a particular way and which may have affected the Applicant, does not constitute information "about the Applicant", although it can be said to relate to him. Information contained in "minutes from the meeting of the decision-maker as to whether the facts found by the investigator mean that harassment within the meaning of Gibbs Gage's policy occurred", as requested by the Applicant, would not be "about" the Applicant although there may be references to him within the minutes.

In Order P2015-05, the Director of Adjudication illustrated the distinction between personal information and information referring to an applicant. She said:

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

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 57] Applying this reasoning, the first email on page 1 and the emails on pages 5-6 are not "about" the Applicant, even though they may refer to the Applicant. Rather, this information is about the Organization's internal processes, and views of employees of the Organization with respect to the administration of a claim.

[para 58] I find that the first email on page 1 and the emails at pages 5-6 are not the Applicant's personal information and the Organization is not required to provide them to the Applicant. However, the remaining emails on page 1, as well as the emails on pages 2-4 and 7-9 are emails sent to or by the Applicant and contain the Applicant's personal information. As I have found that section 24(2)(c) does not apply, I will order the Organization to provide these records to the Applicant.

5. Did the Organization properly apply section 24(3)(b) of PIPA (information would reveal personal information about another individual) to withhold information in the records?

[para 59] The Organization applied section 24(3)(b) to several pages of records relating to records package AR2018-82.

[para 60] This provision 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;*
>
> *…*
>
> *(4) If an organization is reasonably able to sever the information referred to in subsection (2)(b) or (3)(a), (b) or (c) from a copy of the record that contains personal information about the applicant, the organization must provide the applicant with access to the part of the record containing the personal information after the information referred to in subsection (2)(b) or (3)(a), (b) or (c) has been severed.*

[para 61] The Organization states that some of the responsive records contain personal information of other members.

[para 62] The Applicant argues that the existence of third party personal information "in her file" indicates improper information practices or privacy breaches. Having reviewed the records at issue it is clear that not all of the records are part of the Applicant's "file". The Organization also located emails that relate to its internal administration of benefits. Some of these emails communicate tasks that need to be undertaken with respect to a list of files, of which the Applicant's may be one. Although the Organization's information management practices are outside the scope of this inquiry, I can confirm that nothing in the records seems inappropriate from my review.

[para 63] Further, I agree that the information withheld under section 24(3)(b) is personal information of third parties such that the Organization is required to withhold it.

[para 64] Section 24(4) requires an organization to sever the third party personal information and provide the applicant with any remaining personal information of the applicant. In this case, the Organization has properly severed information under section 24(4).

6. Does section 25(1) permit an individual to request that an organization destroy personal information the individual believes was collected in contravention of PIPA?

[para 65] Section 25(1) of PIPA permits an applicant to request a correction to their own personal information in the custody or control of an organization. It states:

> *25(1) An individual may, in accordance with section 26, request an organization to correct an error or omission in the personal information about the individual that is under the control of the organization.*

[para 66] The Applicant requested that the Organization destroy personal information about the Applicant collected from a particular doctor (Dr. M) that the Applicant argues was collected without her consent. This is not a request to correct an error or omission under section 25(1).

[para 67] If the Organization collected personal information without authority to do so under the Act, it may be an appropriate remedy to order the Organization to destroy that personal information. However, the Organization's collection of personal information is not at issue in this inquiry. The Applicant also has a complaint about the Organization's collection, use, and disclosure of their personal information by the Organization with this office; this is the subject of a separate inquiry.

[para 68] To conclude, while there may be situations where it is appropriate to order an organization to destroy personal information, section 25(1) does not deal with destruction of personal information where it is not alleged that the personal information is inaccurate.

7. If the answer to the sixth question is yes, did the Organization respond in accordance with section 25(1) of PIPA?

[para 69] Given my finding above, I do not need to consider this issue.

V. ORDER

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

[para 71] I find that the Organization is not required to obtain records from the independent medical examiners in responding to the Applicant's request.

[para 72] I find that the Organization has established its claim of solicitor-client privilege.

[para 73] I find that section 24(2)(c) does not authorize the Organization to withhold the information on pages 1-4 or pages 7-9 of the 9-page bundle of records in package AR2019-22. As set out in paragraph 58 of this Order, I order the Organization to provide pages 1-4, except the first email on page 1, as well as the emails on pages 7-9 to the Applicant.

[para 74] I find that the Organization is required to withhold personal information of third parties under section 24(3)(b).

[para 75] I find that section 25(1) does not require the Organization to destroy records as requested by the Applicant.

[para 76] I further order the Organization to notify me in writing, within 50 days of receiving a copy of this Order, that it has complied with the Order.

_____

Amanda Swanek
Adjudicator