

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER PIPA2026-02

February 19, 2026

ALBERTA SCHOOL EMPLOYEE BENEFIT PROGRAM

Case File Number 010993

Office URL: www.oipc.ab.ca

Summary: The Complainant had been receiving disability benefits administered by the Alberta School Employee Benefit Plan (the Organization). The Complainant made a complaint to this office that the Organization collected, used, and disclosed their personal information without consent.

The Adjudicator determined that the Organization had authority to collect and use the Complainant's personal information as it did. The Adjudicator found that the Organization had authority to disclose the Complainant's personal information to their union. However, the Organization did not have authority to disclose the Complainant's personal information to a health services provider that the Organization wanted to refer the Complainant to. The Adjudicator ordered the Organization to review its practices regarding referrals to health services providers to ensure that its practices align with the consent provisions in the Act.

Statutes Cited: AB: *Personal Information Protection Act*, S.A. 2003, c. P-6.5, ss. 1, 7, 8, 11, 16, 19, 52.

Authorities Cited: AB: Orders H2014-02, P2005-001, P2006-008, P2021-06

I. BACKGROUND

[para 1] The Complainant applied for disability benefits with the Alberta School Employee Benefit Plan (the Organization).

[para 2] The Complainant made a complaint to this office under the *Personal Information Protection Act* (PIPA or the Act) and the *Health Information Act* (HIA) that the Organization collected, used, and disclosed their information without their consent, in the course of administering their claim. The Commissioner assigned a senior information and privacy manager (SIPM) to investigate and attempt to settle the matter. In this review, the SIPM confirmed that the Organization is subject to PIPA and not the HIA. At the conclusion of this process, the Complainant requested an inquiry.

[para 3] In its initial submission, the Organization provided background information regarding the Complainant's disability claim. It states that the Complainant applied for disability benefits in May 2014. On May 6, 2014, the Complainant signed a form consenting to the collection, use, and disclosure of their personal information, including medical information, to administer the claim. A copy of this form was provided for the inquiry.

[para 4] The Organization states that on February 22 and 23, 2018, the Organization sought further medical information regarding the Complainant's ability to participate in vocational services.

[para 5] The concerns raised by the Complainant relate to the Organization's collection, use, and disclosure of the Complainant's personal information after February 2018.

[para 6] The parties provided copies of relevant documents with their submissions, including a large number of emails between the Complainant and Organization.

II. ISSUES

[para 7] The Notice of Inquiry, dated October 2, 2025, states the issues for inquiry as the following:

1. Did the Organization collect, and/or disclose the Complainant's personal information contrary to, or in compliance with, section 7(1) of PIPA (no collection, use or disclosure without either authorization or consent)? In particular,
 - a. Did the Organization have the authority to collect, use, and/or disclose the information without consent, as permitted by sections 14, 17 or 20 of PIPA?
 - b. If the Organization did not have the authority to collect, use, and/or disclose the information without consent, did the Organization obtain the Complainant's consent in accordance with section 8 of the Act before collecting or disclosing the information? In particular,

- i. Did the individual consent in writing or orally? or
- ii. Is the individual deemed to have consented by virtue of the conditions in section 8(2)(a) and (b) having been met? or
- iii. Is the collection, use or disclosure permitted by virtue of the conditions in section 8(3)(a), (b) and (c) having been met?

By letter dated October 23, 2025, the following issues were added:

2. Did the Organization collect, use or disclose the information contrary to, or in accordance with, sections 11(1), 16(1) and 19(1) of PIPA (collection, use and/or disclosure for purposes that are reasonable)?
3. Did the Organization collect, use or disclose the information contrary to, or in accordance with, sections 11(2), 16(2) and 19(2) of PIPA (collection, use and/or disclosure to the extent reasonable for meeting the purposes)?

III. DISCUSSION OF ISSUES

Preliminary matter – concerns addressed in this inquiry

[para 8] The Complainant's request for review and request for inquiry both include attachments in which the Complainant raised several concerns about the Organization's collection, use, and disclosure of the Complainant's personal information. However, important details were missing from these documents, such as precisely what personal information was collected, used, or disclosed; to whom personal information was disclosed; from whom personal information was collected; and when these collections, uses, and disclosures occurred.

[para 9] In the Notice of Inquiry, the Complainant was instructed to specify precisely what personal information was collected, used, and disclosed by the Organization. The Complainant was also instructed to address why they believe the collections, uses, and disclosures were not authorized.

[para 10] In their initial submission, the Complainant provided a 10-point list of concerns. Some of these concerns are related; I have consolidated the concerns that fall within the scope of PIPA as follows:

- May 2018: the Organization directly contacted a physician who was treating the Complainant (Dr. M), and collected the Complainant's personal information from Dr. M without the Complainant's consent;
- The Complainant's personal information was used by non-medical employees within the Organization;

- The Organization disclosed the Complainant’s personal information to the Complainant’s union; and
- The Organization disclosed the Complainant’s personal information, including medical information it has received from Dr. M, to LifeMark.

[para 11] This inquiry will address these concerns. Some of the concerns raised in the Complainant’s submissions are not issues that I can address under PIPA. Specifically, the Complainant’s concerns about the transfer of a health service to LifeMark and other decisions made by the Organization about how it administered the Complainant’s benefits are outside the scope of this inquiry. While the Complainant has characterized the issue as the Organization requiring consent beyond what is necessary to provide the service under section 7(2) of PIPA, it is clear that the Complainant’s concerns relate to the Organization’s decisions to require the Complainant to attend specific health service providers. The Organization’s decisions regarding the choice of health service providers is not an issue that falls within the scope of PIPA.

[para 12] The parties have provided lengthy submissions to the inquiry. I have reviewed the submissions in full; however, I will only address those arguments that are relevant to the concerns set out above.

1. Did the Organization collect, use and/or disclose the Complainant’s personal information contrary to, or in compliance with, section 7(1) of PIPA (no collection, use or disclosure without either authorization or consent)?

[para 13] The Complainant has the initial burden of proof, in that they have to have some knowledge, and adduce some evidence, regarding what personal information was collected, used, and/or disclosed; the Organization then has the burden to show that its collection and disclosure of the Complainant’s personal information was in accordance with PIPA (Order P2005-001 at para. 8; Order P2006-008 at para. 11).

[para 14] The Act defines “personal information” as “information about an identifiable individual” (section 1(1)(j)). The personal information at issue consists of information about the Complainant’s medical condition; this is the Complainant’s personal information.

[para 15] In this case, the parties agree that the Organization collected, used, and disclosed the Complainant’s personal information. The Organization argues that it obtained the Complainant’s written consent to collect, use, and disclose the Complainant’s personal information as it did.

[para 16] Section 8 of PIPA provides the methods of consent contemplated by the Act. The relevant portions are as follows:

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.

...

(3) Notwithstanding section 7(1), an organization may collect, use or disclose personal information about an individual for particular purposes if

(a) the organization

(i) provides the individual with a notice, in a form that the individual can reasonably be expected to understand, that the organization intends to collect, use or disclose personal information about the individual for those purposes, and

(ii) with respect to that notice, gives the individual a reasonable opportunity to decline or object to having his or her personal information collected, used or disclosed for those purposes,

(b) the individual does not, within a reasonable time, give to the organization a response to that notice declining or objecting to the proposed collection, use or disclosure, and

(c) having regard to the level of the sensitivity, if any, of the information in the circumstances, it is reasonable to collect, use or disclose the information as permitted under clauses (a) and (b).

(4) Subsections (2), (2.1), (2.2) and (3) are not to be construed so as to authorize an organization to collect, use or disclose personal information for any purpose other than the particular purposes for which the information was collected.

Collection of the Complainant's personal information

Parties' arguments

[para 17] The Complainant states that the Organization collected the Complainant's personal information from Dr. M without the Complainant's consent. From the submissions and copies of emails provided to me, I understand that Dr. M was treating the Complainant. On May 11, 2018, the Complainant emailed a letter from Dr. M, dated May 7, 2018, to the Organization's claims facilitator (the Facilitator) who was working with the Complainant. This letter contained Dr. M's recommended treatment plan for the Complainant. On May 12, 2018, the Facilitator faxed Dr. M acknowledging receipt of the May 7, 2018 letter and requesting a copy of the "follow up report" dated May 2, 2018 as well as an invoice for payment. The Organization states that it received a response from Dr. M on May 14, 2018.

[para 18] The Complainant states that they signed a “Release of Information – Extended Disability Benefits” form on May 6, 2014 authorizing the Organization to collect and disclose medical information to and from the Complainant’s health care providers and independent consultants. The Complainant raised several concerns about this form; specifically, that it was a non-specific blanket authorization that did not specify what information would be collected or disclosed, when it would be collected or disclosed, or for what specific purpose; the form did not list specific providers; and the form did not have an expiry date but rather applied for the duration of the extended disability benefits claim.

[para 19] The Complainant states that Dr. M was not the Complainant’s health care provider until 2018 and therefore this form did not authorize the collection of the Complainant’s personal information from Dr. M in May 2018. The Complainant argues that because Dr. M was not treating the Complainant at the time the 2014 consent form was signed, this is a “significant change” to the circumstances or a “new transaction” that required fresh consent.

[para 20] The Organization states that it had the Complainant’s express consent to collect the Complainant’s personal information from Dr. M and that the 2014 form provided this consent.

[para 21] The Organization states that in February 2018, the Organization sought additional medical information to determine whether the Complainant was able to participate in vocational services. The Facilitator emailed the Complainant to inform them that a request was sent to the Complainant’s family physician.

[para 22] The Organization states that the Complainant’s physician provided a letter to the Organization from a specialist, Dr. M, which was dated February 7, 2018.

[para 23] On May 11, 2018, the Complainant sent an email to the Facilitator, to which the Complainant attached a copy of a letter from Dr. M, which was dated May 7, 2018. The Organization included copy of the email and Dr. M’s letter with its initial submission. The subject line of that letter references the Complainant’s claim file with the Organization. The content of the letter is clearly meant to provide information to the Organization about the Complainant’s disability and proposed treatment plan. The Organization states that it followed up with Dr. M on May 12, 2018, and attached a copy of the 2014 consent form for Dr. M. On May 14, 2018, Dr. M faxed a response to the Organization.

[para 24] The Complainant states they voluntarily provided Dr. M’s May 7 letter, but that this “did not authorize contacting Dr. M or collecting additional records” (initial submission, at page 11).

[para 25] The Complainant states that in October 2015, the Organization agreed to notify the Complainant before disclosing their personal information. The Complainant states that the Org “violated this agreement in every 2018 collection and disclosure” (initial submission, at page 3).

Analysis

[para 26] A copy of the Release of Information form (the Release) signed by the Complainant in 2014 and 2018 was provided by both parties. It states:

I [name of individual] authorize any physician, healthcare provider, hospital other healthcare facility or vocational rehabilitation services provider to disclose to the Alberta School Employee Benefit Plan (ASEBP) any diagnostic, treatment and care or vocational information relative to my disability claim as requested by the ASEBP for the purpose of managing my claim for disability benefits, under the provisions of the ASEBP Extended Disability Benefits Plan Document.

I authorize ASEBP to release all necessary information pertaining to my extended disability claim to independent consultants for the purpose of obtaining opinions on the extent of my disability and recommendations regarding course of treatment and vocational rehabilitation services. I also authorize ASEBP to release any medical reports and information it receives to my health care provider(s), if required to assist in the management and treatment of my health condition.

I understand that ASEBP will disclose the following to my employer:

- the decision on whether I qualify for Extended Disability Benefits (EDB) under the plan; and
- any information directly related to my ability to participate in a return to work program with my employer

[para 27] This Release form is clearly intended to be provided to health services providers as evidence of consent from a claimant to the disclosure of personal information *by those health service providers*. Although this Release form (or the use of another form) could more clearly set out that the Organization would be collecting the personal information, a reasonable person would conclude as much from the Release form. I agree that by signing this form, a claimant consents to the collection of their personal information by the Organization from the health services providers as stated in the form, for the purposes set out in the form.

[para 28] With respect to the Complainant's argument that in 2015 the Organization agreed to notify the Complainant of any disclosure of their personal information, I have reviewed the related communications and there is no indication that the Organization agreed to notify the Complainant before collecting personal information in the course of administering the Complainant's claim. I will consider this argument in the section relating to the disclosure of the Complainant's personal information.

[para 29] With respect to the Complainant's argument that the 2014 Release had expired by 2018, nothing before me indicates an expiry date for the form, or otherwise suggests that the Release was no longer valid by 2018. As noted in the Complainant's submission, the form states:

I agree that this authorization shall be in effect from the date below and shall be valid for the duration of this Extended Disability Benefit claim.

[para 30] Had the 2018 collections, uses, and disclosures of the Complainant's personal information related to a *new* claim, and not to the same claim that had started in 2014, my finding may have been different. However, the 2018 collections, uses, and disclosures related to the claim that had started in 2014, for which the Release was signed. I agree with the Organization that it is a good practice to obtain updated signed forms from time to time, but the 2014 form was still valid for the claim that was ongoing.

[para 31] With respect to the Complainant's argument that Dr. M was not treating them when they signed the 2014 Release form, this also does not mean that the Organization could not rely on the consent obtained via that form. It seems reasonable to expect that a claimant will see different health service providers in the course of dealing with a disability. The Release form signed by the Complainant does not limit the consent to health service providers the claimant is seeing at the time the form was signed.

[para 32] I agree with the Complainant that the Release form does not specify precisely what information will be collected, used, or disclosed to when. This does not invalidate the consent obtained via that form; the form appropriately limits the collection, use, and disclosure to what is relevant to the disability claim.

[para 33] I find that the Organization collected the Complainant's personal information from Dr. M with the Complainant's consent.

Use of the Complainant's personal information

[para 34] The Complainant's submissions do not expressly address what personal information they believe the Organization used without authority. In their initial submission, the Complainant states (at page 15):

Organization distributed medical and mental health information to multiple non-medical personnel (claims facilitators, directors, intake staff). As detailed in my Request for Review, non-medical personnel used this information to make medical determinations and adjudications about my treatment and diagnosis, going beyond legitimate claims management purposes.

[para 35] The Complainant refers to this as "disclosures"; however, as the concern relates to the sharing of information among employees of the Organization all involved in administering the Complainant's claim, it is more appropriately characterized as a use of the Complainant's personal information.

[para 36] The Organization's submissions also did not expressly address its use of the Complainant's personal information other than to argue that it had the Complainant's consent to use their personal information to administer the disability claim.

[para 37] I have found above that the Release form signed by the Complainant was sufficient consent to the Organization's collection of personal information from the health services providers as stated in the form, for the purposes set out in the form. As the Release form clearly states that the information disclosed by the health service providers would be used by the Organization for managing the disability claim, I also find that by signing this form, a claimant consents to the Organization's use of their personal information collected from the health services providers as stated in the form, for the purposes set out in the form.

[para 38] From the Complainant's submissions it appears that the Complainant disagrees with the Organization's management of their claim. Specifically, the Complainant argues that non-medical employees made medical decisions about the Complainant's claim. It is not within my jurisdiction to comment on the quality of the decisions the Organization made about the Complainant's disability claim.

Disclosure of the Complainant's personal information

[para 39] Many of the concerns raised by the Complainant relate to the disclosure of their personal information by the Organization to LifeMark. From the materials before me, I understand that LifeMark is a health services provider. The Complainant states that the Organization made a referral to LifeMark and disclosed the Complainant's medical information to LifeMark as part of that referral, without the Complainant's consent.

[para 40] The Organization states that the referral to LifeMark was based on recommendations provided by Dr. M. It states that the Complainant expressly consented to participate in the treatment program recommended by Dr. M. It further states (initial submission, at page 7):

As a result of the [Complainant's] initial agreement to attend the assessment, a referral form and background medical information were sent to LifeMark on June 3, 2018.

[para 41] The Organization states that the Complainant was aware that an assessment with LifeMark was being arranged. The Organization noted that it obtained an updated signed Release form from the Complainant at this time as well.

[para 42] The Complainant also states that the Organization disclosed an IME report to their union representative without the Complainant's consent. The Complainant states (initial submission, at page 15):

While I consented to union representation, I did not consent to disclosure of confidential medical reports. I still don't know what was disclosed, when, or who accessed it.

[para 43] The Organization states that it understands this concern to relate to the Organization's disclosure of the Complainant's "file" to the Alberta Teachers' Association on April 7, 2017. The Alberta

Teachers' Association (ATA) was the Complainant's union at the relevant time. The Organization states (initial submission, at page 8):

On February 24, 2017, the Alberta Teachers' Association requested the [Complainant's] file. The email included a consent form signed by the [Complainant] (Tab R). This consent form directed the "full and complete disclosure of my entire file related to my EDB claims history..." and was apparently signed by the [Complainant]. The Organization subsequently made the disclosure in accordance with this consent. This is the only time the Organization provided the [Complainant's] personal information to the Alberta Teachers' Association. Accordingly, the Organization specifically denies doing so without consent.

[para 44] The Complainant also states that by email dated October 27, 2015, the Organization agreed to notify the Complainant prior to disclosing the Complainant's personal information. The Complainant states (initial submission at page 3):

On October 22, 2015, the Claims Facilitator acknowledged my right to notification, stating:
"You can be notified when we would distribute any information to your health care providers or to consultants... Should you have any concerns or objections about the distribution of your information to a particular health care provider or practitioner, we can certainly discuss those circumstances specifically and in fact, I would encourage that."

[para 45] The Complainant argues that the Organization "violated this agreement in every 2018 collection and disclosure."

[para 46] Regarding the agreement to notify the Complainant, the Organization states that the October 27, 2015 email from the Facilitator to the Complainant states that the Complainant can be notified of a disclosure but the signed Release form provides written consent to the Organization to disclose the Complainant's medical information. The Organization states that the October 27, 2015 email "does not abrogate or modify the Release of Information form" (initial submission at page 8).

Analysis

Disclosure to LifeMark

[para 47] With respect to the Organization's referral to LifeMark, and the disclosure of the Complainant's personal information to LifeMark, the parties provided me with copies of emails setting out the relevant facts as follows:

- On May 11, 2018, the Complainant provided the Facilitator with a letter from Dr. M, dated May 7, 2018, containing Dr. M's recommended treatment plan for the Complainant.
- On May 22, 2018, the Facilitator emailed the Complainant, stating that the Facilitator wanted to propose a treatment program in light to Dr. M's recommendations. The Facilitator stated that they were researching providers in the Complainant's municipality. The Facilitator said they would provide a letter with more details shortly.

- On May 23, 2018, the Complainant responded to the above email from the Facilitator, stating that Complainant “is more than willing to participate in [the recommended treatment].” In this email, the Complainant also stated that they are already undertaking one of the several specified treatments that had been recommended by Dr. M. The Complainant also asked the Facilitator when the Complainant could expect the Facilitator’s detailed letter.
- On May 30, 2018, a coordinator from LifeMark emailed the Facilitator stating that the Facilitator’s request had been reviewed and that a clinical director with LifeMark had recommended a particular assessment. The coordinator then requested that the Facilitator send a referral form and “any relevant medical information.”
- On June 3, 2018, at 12:34pm, the Facilitator emailed the Complainant requesting an updated Release of Information form to be signed. The Facilitator also said that the Organization “would like to refer you for an assessment and an interdisciplinary rehabilitation program with LifeMark that would include...”.
- On June 3, 2018, at 3:18pm, the Facilitator responded to the LifeMark coordinator. It appears that an attachment was provided with this email. In its submission, the Organization states that it sent the referral form and the Complainant’s background medical information to LifeMark with this email.
- On June 4, 2018, the Complainant emailed the Facilitator in response to the Facilitator’s email of June 3, advising that the Complainant had already been referred to a specified treatment plan by Dr. M, from a specified provider. The Complainant asked whether the Organization required additional assessment through LifeMark in addition to that specified treatment.
- By separate email on June 4, 2018, the Complainant emailed the new signed Release form to the Facilitator.
- On June 7, 2018, the Complainant emailed the Facilitator stating the LifeMark had called and informed the Complainant that they had been referred to LifeMark by the Organization. The Complainant stated that they were unclear why they were referred to LifeMark when they were already undergoing treatment elsewhere. The Complainant also stated that they were referred to the already-ongoing treatment by their family physician, on the recommendation of Dr. M.

[para 48] The Organization states that neither Dr. M nor the Complainant had initially indicated that the Complainant had already been referred to treatment providers. The Organization states that the Complainant agreed to treatment and therefore the Organization had the Complainant’s consent to disclose the Complainant’s personal information to LifeMark for the referral.

[para 49] From the emails above, I can understand why the Facilitator may have initially concluded that the Complainant did not yet have a referral to treatment providers. However, I disagree that the Organization had the Complainant’s consent to disclose their personal information to LifeMark as it did.

[para 50] First, the Facilitator’s communication to the Complainant that the Facilitator was researching treatment providers in the Complainant’s area was not sufficient to alert the Complainant

that their medical information would be disclosed to whatever treatment provider the Facilitator located.

[para 51] Further, the Release form the Organization relies upon to support its argument that the Complainant consented to the disclosure to LifeMark only applies to the disclosure to independent consultants, and the Complainant's health care providers:

I authorize ASEBP to release all necessary information pertaining to my extended disability claim to independent medical consultants for the purpose of obtaining opinions on the extent of my disability and recommendations regarding course of treatment and vocational rehabilitation services. I also authorize ASEBP to release any medical reports and information it receives to my health care provider(s), if required to assist in the management and treatment of my health condition.

[para 52] At the time of the Organization's disclosure of the Complainant's personal information to LifeMark, LifeMark was not the Complainant's health care provider.

[para 53] In Order H2014-02, the adjudicator addressed a situation in which a physiotherapy clinic accessed a past patient's information in Netcare, anticipating that this patient would return for further services. However, the patient had not actually requested further services at the relevant time. The issue before the adjudicator was whether the access of the health information from Netcare was authorized for the purpose of "providing health services" within the terms of section 27(1)(a) of the *Health Information Act* (HIA). The adjudicator concluded that access of the patient's information in Netcare was not authorized for the purpose of providing a health service because a health service was not requested at that time. The adjudicator said (at paras. 38-39):

A health service cannot be provided in the absence of the agreement of the patient or someone who acts on behalf of the patient. If an individual has requested that a health service provider provide him or her with health services, or has requested a health service provider's advice regarding a health service that could be given, or someone else with authority to do so on that person's behalf has requested such a service, then the terms of the provision are met that there is a purpose of providing a health service. Under these circumstances, section 27(1)(a) would authorize the use of health information for the purpose of providing that health service.

However, in a case where an individual or someone authorized on their behalf has not requested or otherwise agreed to the individual's receiving a health service or obtaining advice about a health service from the health service provider, there is no health service that is to be provided. The provision neither states, nor, in my view, does it contemplate, use of health information both for the purpose of providing a health service, as well as for possibly providing a health service should the need arise. Even if one were to limit the idea to a reasonably anticipated need, the latter interpretation would unreasonably strain the language chosen by the legislators.

[para 54] This decision was made under the HIA, which governs the collection, use, and disclosure of health information by custodians. That legislation has different rules for collection, use, and disclosure than PIPA, in part due to the sensitive nature of health information.

[para 55] Nevertheless, the adjudicator's analysis in Order H2014-02 is relevant here. In this case, the Organization argues that it had the Complainant's consent to disclose personal information to health care providers and therefore to LifeMark. However, similar to the situation in Order H2014-02, the Complainant had not agreed to treatment from LifeMark. Therefore, LifeMark could not be considered to be the Complainant's health care provider at the time of the Organization's disclosure.

[para 56] The Facilitator did tell the Complainant that the Facilitator intended to refer the Complainant to LifeMark. However, informing the Complainant of this intent was not sufficient; the Complainant did not have an opportunity to agree to be referred to LifeMark. Given this, the Organization did not have the Complainant's consent to disclose the Complainant's information to LifeMark.

[para 57] I am distinguishing LifeMark from independent medical consultants, to which the Release form authorizes disclosure to obtain opinions. The Organization has not argued that LifeMark was performing this role.

[para 58] This is also different from the situation with Dr. M, discussed above. While Dr. M was not the Complainant's health care provider when the Complainant signed the Release form in 2014, Dr. M was the Complainant's health care provider at the time the Complainant's personal information was collected. In contrast, the disclosure by the Organization of the Complainant's personal information to LifeMark, LifeMark was not yet providing health services to the Complainant.

[para 59] In its submission, the Organization made a brief reference to the "deemed consent" provision under section 8(2) of the Act, where an individual is deemed to consent to the collection, use, or disclosure of their personal information for a particular purpose if they voluntarily provided that information for that purpose, and it is reasonable that a person would voluntarily provide the information. In Order P2021-06, the adjudicator found that medical information provided by the complainant was too sensitive for an organization to rely on deemed consent. He found (at para. 75):

Regarding his personal family and medical information, I find that the Complainant cannot be deemed to have consented to collection or use of it. While the Complainant provided the information, apparently reluctantly, it is not reasonable that the Complainant would voluntarily provide the information that he did as required by section 8(2)(b). Here, I reiterate that the personal family and medical information provided by the Complainant was, as I earlier described, "extraordinarily sensitive." It is conceivable that in other circumstances, involving less sensitive personal information, it may be reasonable for an individual to voluntarily provide personal information in order to make a compassionate case for loan (or other service).

[para 60] I agree with this analysis. Further, the information that the Organization disclosed to LifeMark may not all have been provided by the Complainant; at least some of it may have been provided by the Complainant's health care providers. Therefore, the Organization cannot rely on section 8(2) to deem the Complainant to have consented to its disclosure to LifeMark. For similar reasons, the Organization also could not rely on the "opt out" consent set out in section 8(3) of the Act.

[para 61] Lastly, the Organization is not required to obtain the Complainant's consent to disclose their personal information if one of the circumstances set out in section 20 applies. Sections 20(a) – (r) specify circumstances in which personal information can be disclosed without consent. The Organization has not argued that any of those circumstances apply and I also cannot identify any that apply.

[para 62] Given the above, I find that the Organization did not have authority to disclose the Complainant's personal information to LifeMark.

[para 63] After the Complainant had expressed concern to the Organization about the referral to LifeMark, the Facilitator contacted LifeMark and asked it to delete the information about the Complainant that the Organization had provided, and confirm that it had done so. The Facilitator provided the Complainant with LifeMark's email in which it confirmed that it had done this. A copy of this email was also provided to me.

[para 64] Given the sensitivity of medical and similar information that maybe contained in a referral, I will order the Organization to review its practices when referring clients for treatments, to ensure it is obtaining express, written consent to do so, in accordance with the Act.

Disclosure to the Complainant's union

[para 65] With its initial submission, the Organization provided a copy of an email, dated March 1, 2017, from the ATA to the Organization requesting the Complainant's file. A consent form was attached to that email, which states, in part:

TO: The Alberta School Employee Benefit Plan

This is to direct and authorize you to make full and complete disclosure of my entire file related to my EDB claims history including but not limited to:

- 1) all correspondence
- 2) all documentation and
- 3) any and all medical information

you may have or have had in your possession, custody or control, or to which you have or have had access which is in any way related to the undersigned, and including, but without restricting the generality of the foregoing: medical history, diagnosis, treatment, symptoms, prognosis, opinion, the results or the conclusions of any tests of any kind,

x-rays and lab results, internal claims reporting and running notes, and reports to my employing board and/or other knowledge with respect to the above-noted matter to The Alberta Teachers' Association (the "Association").

And, this is notification that the Association has authority to act on my behalf and that I have consented to the collection, use and disclosure of my personal and other information, both from me and from other sources, in connection with the purposes for which I have sought the assistance of the Association.

[para 66] This form was signed by the Complainant and dated February 23, 2017. The Complainant did not address this form in their rebuttal submission.

[para 67] I agree with the Organization that the consent form signed by the Complainant authorizes the Organization to disclose the information in the Complainant's file to the ATA.

[para 68] Regarding the October 2015 agreement to notify the Complainant of a disclosure of the Complainant's personal information, a copy of the relevant emails were provided to me.

[para 69] On October 2, 2015, the Complainant sent an email to the Facilitator, expressing concerns about the disclosure of the Complainant's personal information in a particular report from Dr. K. The Complainant stated:

Due to the fact that this report is personal and highly confidential medical information I would like to state that any sharing or reading of [Dr. K's] report-- in part or whole--beyond the individuals listed above will need the expressed written consent of disclosure from myself, [the Complainant]. Also, if there is any known disclosure of this document-- in part or whole-- beyond what I have listed above, it is without authorization and I will need to be notified immediately.

[para 70] On October 6, 2015, the Facilitator responded by email, stating:

Thank you very much for expressing your concerns. Regarding your written consent and authorization, you have provided a Release of Information form to your claim. The Release of Information form that you completed allows ASEBP to collect medical information and release medical information to your health care providers as well as to independent consultants for opinion and recommendations which may be essential in the ongoing determination of your benefits. This does not include your employer despite what you may have understood and noted in your previous e-mails. You may, at any time, revoke your Release of Information but you must consider that without a Release of Information, this would impact your eligibility for disability benefits. You can be notified when we would distribute any information to your health care providers or to consultants but your Release does provide us with the written consent you referred to. Should you have any concerns or objections about the distribution of your information to a particular health care provider or practitioner, we can certainly discuss those circumstances specifically and in fact, I would encourage that. If you would like a copy of the Release form you completed, I can provide that to you as well.

[para 71] On October 22, 2015, the Complainant responded:

Thank you for the detailed response. Yes, I would appreciate prior notification and discussion before any distribution of my information. Thank you for clarifying that only health care providers and consultants receive this information, and not employers etc. And thank you for affirming who has copies and who has had access to my information and reports.

If you can send me a copy of the release form, that would be great.

[para 72] This email conversation started with the Complainant's concerns about the disclosure of a particular report from a particular doctor. The Complainant asked to restrict the disclosure of that report. The Facilitator's response was to remind the Complainant that they had signed a Release form consenting to disclosure and that this consent could be rescinded but doing so may affect the Complainant's claim. The Complainant then asked that the Facilitator provide the Complainant with prior notification of any disclosure of their personal information.

[para 73] In its submission, the Organization states that this email exchange did not modify the Complainant's Release form.

[para 74] I do not need to decide whether the Complainant modified their consent in the above email exchange because the question before me is whether the Complainant consented to the disclosure of their file to the ATA and it is clear from the consent form that the Complainant expressly consented to the disclosure of that information by the Organization to the ATA. Even if the Complainant modified the consent previously provided in the 2014 Release form by requesting prior notification of any disclosure, the Organization did not need to notify the Complainant of the disclosure that the Complainant had already expressly consented to in the form provided to the Organization by the ATA.

[para 75] That said, individuals can certainly withdraw or vary consent that has previously been given. Section 9 of PIPA sets out how an individual can vary or withdraw consent, and the limitations on varying or withdrawing consent. The Complainant seems to have made a request to vary the consent previously provided in the 2014 Release, in a manner consistent with the process set out in section 9. Therefore, it is not clear why the Organization states that the Complainant's email did not modify their consent. I also note that the Organization made this variance to the Complainant's 2018 Release form. By email dated July 19, 2018, the Facilitator informed the Complainant that the 2018 Release was modified (by way of an instruction on the Complainant's file) in response to the Complainant's request that they receive prior notification of disclosure. From this I conclude that the Organization is aware of the Complainant's ability to vary their consent under the Act, and has since accepted a request from the Complainant to vary consent.

Conclusion

[para 76] I find that the Organization disclosed the Complainant's personal information to LifeMark without consent. However, I find that the Organization had the Complainant's consent to disclose their personal information to the ATA.

2. Did the Organization collect or disclose the information contrary to, or in accordance with, sections 11(1), 16(2) and 19(1) of PIPA (collection, use and/or disclosure for purposes that are reasonable)?

[para 77] I will consider this issue with the one below.

3. Did the Organization collect, use or disclose the information contrary to, or in accordance with, sections 11(2), 16(2) and 19(2) of PIPA (collection and/or disclosure to the extent reasonable for meeting the purposes)?

[para 78] Even where an individual consents to the collection, use, or disclosure of their personal information, sections 11(1), 16(1) and 19(1) require an organization to collect, use, and disclose personal information only for purposes that are reasonable. Sections 11(2), 16(2) and 19(2) limit an organization's collection, use, and disclosure to what is reasonable for meeting the purposes of the collection, use, and disclosure.

11(1) An organization may collect personal information only for purposes that are reasonable.

11(2) Where an organization collects personal information, it may do so only to the extent that is reasonable for meeting the purposes for which the information is collected.

...

16(1) An organization may use personal information only for purposes that are reasonable.

16(2) Where an organization uses personal information, it may do so only to the extent that is reasonable for meeting the purposes for which the information is used.

...

19(1) An organization may disclose personal information only for purposes that are reasonable.

19(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 used.

[para 79] Section 2 defines reasonable as follows:

2 Where in this Act anything or any matter

- (a) is described, characterized or referred to as reasonable or unreasonable, or*
- (b) is required or directed to be carried out or otherwise dealt with reasonably or in a reasonable manner,*

the standard to be applied under this Act in determining whether the thing or matter is reasonable or unreasonable, or has been carried out or otherwise dealt with reasonably or in a reasonable manner, is what a reasonable person would consider appropriate in the circumstances.

[para 80] Regarding the collection of the Complainant's personal information, the Complainant's submissions did not address the purposes of the Organization's collections, uses, or disclosures. The Complainant states that the collections, uses, and disclosures were unreasonable; I have addressed these concerns above.

[para 81] The Organization states that it collected only personal information of the Complainant that was relevant to the medical condition related to the Complainant's disability claim.

[para 82] The Organization collected the Complainant's personal information from Dr. M for the purpose of making decisions about the Complainant's disability benefits. This is a reasonable purpose. Nothing before me indicates that the Organization collected this information for any other purposes.

[para 83] As to the extent of the collection, the Organization states that it collected information only about the evaluations and treatments relating to the Complainant's disability claim. Nothing before me indicates that the Organization collected more personal information than was reasonable to administer the Complainant's claim.

[para 84] Regarding the use of the Complainant's personal information, I understand that employees of the Organization used the information to administer the Complainant's claim. The Complainant argues that employees of the Organization without medical training ought not have used their personal information. In response, the Organization states (initial submission at page 11):

The claims facilitators involved in the Applicant's file are professionally trained to administer and evaluate disability claims under the Organization's plan. The Applicant's personal information was handled by the Organization specifically for this purpose.

[para 85] The Complainant's personal information was used to administer their disability claim; this is a reasonable purpose. I agree that whether the Organization's employees have medical training is not relevant to this finding. Nothing before me indicates that the Organization used the Complainant's personal information for any other purpose, or that the Organization used the Complainant's beyond what was reasonable to administer the claim.

[para 86] Regarding the disclosure of the Complainant's personal information, I found that the Organization did not have authority to disclose the personal information to LifeMark in May and June 2018, as it did. I do not need to consider whether that disclosure was reasonable under sections 19(1) or (2).

[para 87] I found that the Organization had consent to disclose the Complainant's personal information to the ATA. The consent form signed by the Complainant states that the purpose of the ATA's collection of information from the Organization (and therefore the purpose of the Organization's disclosure to the ATA) was so that the ATA could provide assistance to the Complainant. This is a reasonable purpose. Nothing before me indicates that the Organization disclosed the Complainant's personal information to the ATA beyond what was necessary for this purpose.

[para 88] With respect to the collection, use, and disclosure of the Complainant's personal information that I found to be authorized above, I find that the Organization's purposes for the collection, use, and disclosure were reasonable and to the extent reasonable under sections 11(1) and (2); 16(1) and (2); and 19 (1) and (2).

IV. ORDER

[para 89] I make this Order under section 52 of the Act.

[para 90] I find that the Organization had authority to collect and use the Complainant's personal information as it did.

[para 91] I find that the Organization had authority to disclose the Complainant's personal information to the Complainant's union (ATA).

[para 92] I find that the Organization did not have authority to disclose the Complainant's personal information to LifeMark. I order the Organization to review its practices regarding referrals to health services providers to ensure that its practices align with the consent provisions in the Act as discussed in this Order.

[para 93] I further order the Organization to notify me and the Complainant in writing, within 50 days of its receipt of a copy of this Order, that it has complied with my Order.

Amanda Swanek
Adjudicator