



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
— for —
British Columbia

Decision P07-02

HANNE JENSEN & ASSOCIATES LTD.

Celia Francis, Senior Adjudicator

September 12, 2007

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Summary: The organization's request that this matter not proceed to inquiry is granted because the *Freedom of Information and Protection of Privacy Act* applied to the personal information sought under the *Personal Information Protection Act*. The *Personal Information Protection Act*, because of section 3(2)(d), did not apply.

Statutes Considered: *Personal Information Protection Act*, ss. 3(2)(d), 50.

Authorities Considered: **B.C.:** Order 04-19, [2004] B.C.I.P.C.D. No. 19; Order P05-02, [2005] B.C.I.P.C.D. No. 19; Order P05-02, [2005] B.C.I.P.C.D. No. 20; Order 01-03, [2001] B.C.I.P.C.D. No. 3; Order 02-57, [2002] B.C.I.P.C.D. No. 59; Decision F07-04, [2007] B.C.I.P.C.D. No. 20; Decision F06-09, [2007] B.C.I.P.C.D. No. 33.

1.0 INTRODUCTION

[1] The organization is an investigator who conducts conflict resolution services under the name "Hanne Jensen & Associates Ltd." (the "Investigator"). She applied under s. 50 of the *Personal Information Protection Act* ("PIPA") for this Office to decline to conduct an inquiry under Part 11 of PIPA into the respondent's access to information request to the Investigator.

[2] The respondent is a physician (the "Physician") who, through his association with the Provincial Health Services Authority ("PHSA"), was the subject of a harassment investigation and report the Investigator did for the PHSA. The Physician made a request to the Investigator under PIPA for access to his personal information in her possession:

I herein request all materials relating to me and which relate to the recent harassment investigation as conducted by yourself. This would include all materials, emails, notes to file, correspondence, and any other relevant material in

your possession. Such material should include that which directly relates to my interactions with you, whether myself or my counsel, as well as any material before, during, or after the investigative process. The material should also include materials relating to me in regards to your appointment as investigator, including your service contract. This material should also include material relating to me in regards to your interactions with...and any other individual or body, public or private, which is relevant to the above. This would include details of testimony used against me in any regard.

[3] The Physician also directed a request under the *Freedom of Information and Protection of Privacy Act* ("FIPPA") to the PHSA, a public body under FIPPA, for access to all records related to the harassment investigation.

[4] I have considered the submissions of the parties and concluded that this matter should not proceed to inquiry under PIPA because FIPPA, not PIPA, applies to the requested personal information.

2.0 DISCUSSION

[5] The Physician's access request to the Investigator under PIPA was made on June 1, 2005. The Investigator did not provide access to any information. In her response of June 14, 2005, she instead noted that this Office had previously found that records of a contract investigator such as herself were within the custody or control of the public body in question under FIPPA.¹ She suggested the Physician was required to make an access request to the PHSA under FIPPA, rather than to the Investigator under PIPA.

[6] The Physician requested that this Office review the Investigator's decision. When mediation did not resolve the matter, the Physician requested an inquiry under PIPA. The Investigator applied to this Office for it to decline to conduct an inquiry under PIPA, on the ground that the records involved were in the custody and control of the PHSA that had retained her services as an investigator.

[7] The relevant provisions of PIPA are s. 50, which confers discretion about proceeding to inquiry on a request for review that has not settled in mediation, and s. 3(2)(d), which provides that PIPA does not apply to personal information to which FIPPA applies.

[8] In support of this application, the Investigator referred to Orders P05-02 and P05-03.² These orders are both dated May 27, 2005. They held that the Physician's requests for access to his personal information from two law firms that acted for the PHSA concerned records to which FIPPA applied and therefore PIPA, because of s. 3(2)(d), did not apply. The Investigator also stated that the materials the Physician sought under PIPA were in the custody and control of the PHSA, the Physician had

¹ See Order 04-19, [2004] B.C.I.P.C.D. No. 19.

² [2005] B.C.I.P.C.D. No. 19; [2005] B.C.I.P.C.D. No. 20.

requested the Investigator's files from the PHSA and it had responded to that access request under FIPPA.

[9] In response to the Investigator's position, the Physician submitted that he did not, after all, want his request under PIPA to be interpreted to cover personal information to which FIPPA applied. However, he perceived a possibility the Investigator could have personal information about him that pre- or post-dated her investigative services to the PHSA.

[10] FIPPA decisions have held that the circumstances for exercising discretion in favour of not holding an inquiry include where the principles of abuse of process, *res judicata* or issue estoppel apply and where it is plain and obvious the records in dispute are subject to an exception to disclosure or they fall outside FIPPA's scope.³

[11] I accept the Investigator's response to the Physician's request for access to his personal information under PIPA. Having regard to the breadth and wording of that access request, as well as the reasoning and effect of Order 04-19, I reject the spectre suggested by the Physician of there being residual personal information to which FIPPA, and the Physician's access request to the PHSA, did not apply. The personal information captured by the access request under PIPA was within the custody or control of the PHSA and therefore subject to FIPPA, with the effect that PIPA, because of s. 3(2)(d), did not apply. As a result, no inquiry is called for under PIPA.

3.0 CONCLUSION

[12] For the reasons given, this matter will not proceed to inquiry under Part 11 of PIPA.

September 12, 2007

ORIGINAL SIGNED BY

Celia Francis
Senior Adjudicator

OIPC File No.: P05-25733

³ Order 01-03, [2001] B.C.I.P.C.D. No. 3; Order 02-57, [2002] B.C.I.P.C.D. No. 59; Decision F07-04, [2007] B.C.I.P.C.D. No. 20; Decision F06-09, [2007] B.C.I.P.C.D. No. 33.