



OFFICE OF THE
INFORMATION &
PRIVACY COMMISSIONER
FOR BRITISH COLUMBIA

Order P19-03

UNIFOR LOCAL 114

Celia Francis
Adjudicator

October 21, 2019

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Summary: An employee of Unifor National complained that Unifor Local 114 contravened several sections of the *Personal Information Protection Act* (PIPA) regarding alleged verbal disclosures of his personal information. The adjudicator made the following findings: PIPA applies to unrecorded personal information; the evidence does not establish that one of the verbal statements was made; and the unrecorded personal information in the other two verbal statements is excluded from the scope of PIPA under s. 3(2)(a) (collection, use and disclosure of the personal information was for the personal or domestic purposes of the individual who is collecting, using or disclosing the personal information, and for no other purpose). It was not necessary to consider the remaining issues.

Statutes Considered: *Personal Information Protection Act*, s. 3(2).

INTRODUCTION

[1] This case concerns whether an organization's handling of unrecorded personal information complied with the *Personal Information Protection Act* (PIPA). In January 2017, an employee of Unifor National (complainant) wrote to the Office of the Information and Privacy Commissioner (OIPC) to complain that Unifor Local 114 (Local 114) had not complied with several sections of PIPA in its handling of his personal information. The OIPC's investigation and mediation of the complaint did not resolve the matter and it proceeded to inquiry. The complainant and Local 114 both made submissions.

[2] The statement of agreed facts in the OIPC investigator's fact report says that the complainant initially complained to Local 114 that it had contravened ss. 14 and 17 of PIPA when an individual made the following verbal statements about him:

- that the complainant had harassed her although an investigation had concluded that her complaint was unfounded;
- that the complainant was improperly assigning work tasks;
- why she [the individual] believed the complainant was not in attendance at an arbitration hearing.¹

[3] The fact report also states that the complainant wanted Local 114 to correct his personal information, although it does not specify how.²

[4] The fact report then states that, at this inquiry, the Commissioner or his delegate would consider three issues:

1. Does the definition of "personal information" in PIPA include information expressed verbally?
2. If so, was the verbally expressed information at issue in this case under the control of the organization, pursuant to s. 4 of PIPA?
3. If the verbally expressed information at issue was under the control of the organization, did the organization comply with sections 14, 17, 24, 33 and 34 of PIPA?³

[5] I take issues 2 and 3 to refer to the three alleged verbal statements listed in paragraph 1 of the fact report. In this order, therefore, I consider the issues as they relate to these three alleged verbal statements.

PRELIMINARY MATTERS

Additional issues raised

[6] The complainant's inquiry submissions raised complaints that are not included in the OIPC investigator's fact report. They are about alleged verbal statements besides the three listed above.

[7] Past orders have said that a party may not raise new issues at the inquiry stage without the OIPC's approval.⁴ The complainant did not obtain the OIPC's

¹ Para. 1, investigator's fact report.

² Para. 1, investigator's fact report.

³ Para. 5, fact report.

⁴ For example, Order F18-33, 2018 BCIPC 36 (CanLII), and Order F18-07, 2018 BCICP 9 (CanLII).

prior approval to expand the scope of the inquiry beyond the matters set out in the fact report and the notice of inquiry. He also did not provide any explanation as to why he should be permitted to do so now. I do not, therefore, consider these additional complaints to be properly before me and I will not make any decision about them.

Scope

Local 114 argued that, under s. 3(2)(a),⁵ the information at issue here is excluded from the scope of PIPA.⁶ The complainant argued the contrary.⁷

Whether the information at issue is excluded from the scope of PIPA under s. 3(2)(a) is also a new issue that was not listed in the notice or fact report. This submission, however, raises the threshold, fundamental question of whether PIPA even applies to the information described above. It is necessary to consider it, since it determines whether this inquiry may proceed beyond that threshold issue.

I also note that the complainant had an opportunity to address this issue in his reply submission and that he did so. Moreover, the whole tenor of the complainant's submissions is that PIPA applies to the information at issue.

ISSUES

[8] The issues before me are these:

1. Does the definition of "personal information" in PIPA include unrecorded information?
2. If so, is the unrecorded personal information at issue excluded from the scope of PIPA under s. 3(2)(a)?
3. If PIPA applies to the unrecorded personal information at issue, was it under Local 114's control for the purposes of s. 4(2) of PIPA?
4. If it was under Local 114's control, did Local 114 comply with ss. 14, 17, 24, 33 and 34 of PIPA?⁸

⁵ PIPA does not apply to several types of personal information, including, under s. 3(2)(a), where the collection, use and disclosure of the personal information was for the personal or domestic purposes of the individual who is collecting, using or disclosing the personal information, and for no other purpose.

⁶ Local 114's response submission, paras. 80-104.

⁷ Complainant's reply submission, paras. 25, 29.

⁸ The fact report states that the complainant originally raised ss. 14, 17 and 24 of PIPA. However, the notice and fact report also listed ss. 33 and 34. The complainant raised s. 33 in his complaint to the OIPC. It appears s. 34 arose during the OIPC's investigation and mediation of the complaint.

[9] Section 51 of PIPA, which sets out the burden of proof for hearings under PIPA, is silent respecting the types of issues listed above. It is, therefore, in the interests of both parties to provide evidence and arguments to support their positions.⁹

DISCUSSION

Background

[10] Local 114 is a branch of Unifor National. Local 114 is a separate legal entity, a trade union in its own right and an “organization” under PIPA. Local 114 is responsible for providing representation and support to its members and to the bargaining units it represents in collective bargaining, grievances, arbitrations and other labour relations matters.¹⁰

[11] Unifor National is a trade union with locals across Canada. Unifor National is responsible for providing leadership to its provincial locals, like Local 114. It provides direction to its locals on significant issues, as well as labour relations support.

[12] The complainant is a Unifor National employee and is assigned to provide support to Local 114. His complaint centres on alleged verbal statements by an employee of Local 114. In these reasons, I refer to this Local 114 employee as the “respondent.”

[13] In early 2016, the respondent complained about the complainant’s behaviour to Local 114’s president and its secretary treasurer. These two individuals met with the complainant. The respondent later made a formal complaint to Unifor National, the complainant’s employer, alleging the complainant had bullied and harassed her.

[14] Unifor National appointed an investigator to deal with the bullying and harassment complaint. The investigator interviewed the complainant, the respondent and 15 staff in Local 114’s offices. The investigator issued a report in August 2016. Local 114 later arranged for the respondent and complainant to no longer work together.

[15] In October 2016, the complainant filed a grievance with Unifor National about the respondent’s alleged breaches of confidentiality. Unifor National

⁹ Order P15-01, 2015 BCIPC 20 (CanLII), para. 3.

¹⁰ Except for the information on the complainant’s grievance to Unifor National, this background information is drawn from the affidavits of Local 114’s president (at paras. 2-27), the respondent’s representative (at paras. 5-36, 40) and the respondent (at paras. 3-37).

declined to process the grievance because the respondent was not a Unifor National employee.¹¹

[16] In mid-October 2016, the complainant wrote to the respondent and the individual who had represented her in the bullying and harassment complaint process — to whom I refer here as the respondent's "representative" — asserting that they had defamed him. He demanded that they retract their statements and apologize. The respondent and her representative replied jointly to the complainant, rejecting his assertions.

[17] In December 2016, the complainant complained to Local 114 that, throughout 2016, the respondent had disclosed information to Local 114 and Unifor National staff about her bullying and harassment complaint against the complainant. The complainant also asked that Local 114 correct his personal information.

[18] Local 114 and the complainant exchanged letters on these subjects. In early 2017, the complainant complained to the OIPC that Local 114 had not complied with sections 14, 17, 24 and 33 of PIPA in its handling of what he alleged the respondent said about him.

Does the definition of “personal information” in PIPA include unrecorded information?

[19] I will first consider whether the definition of “personal information” in PIPA includes information that is not recorded. The complainant argued that PIPA's definition of “personal information” applies to “verbally expressed” personal information.¹² Local 114 argued that the definition applies only to recorded personal information.¹³

[20] PIPA defines “personal information” as follows:

“personal information” means information about an identifiable individual and includes employee personal information but does not include

(a) contact information, or

(b) work product information;

“employee personal information” means personal information about an individual that is collected, used or disclosed solely for the purposes reasonably required to establish, manage or terminate an employment

¹¹ Complainant's complaint of January 17, 2017 to the OIPC, at p. 4.

¹² Complainant's initial submission, p. 7.

¹³ Local 114's response submission, paras. 64-72.

relationship between the organization and that individual, but does not include personal information that is not about an individual's employment;

“contact information” means information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual;

“work product information” means information prepared or collected by an individual or group of individuals as a part of the individual's or group's responsibilities or activities related to the individual's or group's employment or business but does not include personal information about an individual who did not prepare or collect the personal information.

[21] PIPA defines “personal information” as “information about an identifiable individual”. The issue is whether, despite the fact that the definition does not expressly refer to *recorded* “information about an identifiable individual,” personal information must be “recorded” for PIPA to apply to its collection, use and disclosure. Put another way, did the Legislature intend “personal information” to be *implicitly* limited to recorded personal information, even though the word “recorded” does not appear?

[22] Following the modern approach to statutory interpretation, the words of a provision are to be read in their entire context and in their grammatical and ordinary sense, harmoniously with the scheme of the Act, the object of the Act and the intention of legislators.¹⁴

[23] When interpreting a statute, it is appropriate to refer to similar language, or provisions, in other statutes dealing with the same subject matter.¹⁵ The *Freedom of Information and Protection of Privacy Act* (FIPPA), BC's public sector privacy legislation, is such a statute. Although there are undoubtedly differences between FIPPA and PIPA, in many ways they are materially similar. There is no doubt, certainly, that they deal with the same subject matter, *i.e.*, the collection, use and disclosure of individuals' personal information. For the purposes of this discussion, it is noteworthy that their definitions of “personal information” are similar.

[24] In my view, it is both appropriate and useful to consider FIPPA's definition of “personal information” in determining what the Legislature intended in PIPA. The issue is whether, having unequivocally stipulated in FIPPA that personal information must be “recorded,” the Legislature nonetheless intended, despite

¹⁴ *Rizzo & Rizzo Shoes Ltd (Re)*, [1998] 1 S.C.R. 27 [*Rizzo*]; see also *Lavigne v Canada (Office of the Commissioner of Official Languages)*, 2002 SCC 53, and *Merck Frosst Canada Ltd v Canada (Health)*, 2012 SCC 3.

¹⁵ Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed. (Markham, Ont.: LexisNexis Canada, 2014) at para. 13.25 [Sullivan].

the absence of the word “recorded” in PIPA’s definition, to implicitly limit that definition to “recorded” personal information?

[25] FIPPA was enacted in 1992 and came into force in 1993. PIPA was enacted in 2003 and came into force in 2004. Drafters and legislators were therefore aware, in preparing and passing PIPA, of FIPPA’s stricture that it only applies to “recorded” information. Knowing this, they did not include the word “recorded” in the PIPA definition of “personal information”.

[26] When PIPA was passed in 2003, the federal *Personal Information Protection and Electronic Documents Act* (PIPEDA) had partially come into force.¹⁶ PIPEDA is the federal private sector privacy law. As I have already said, when interpreting a statute, it is appropriate to consider the language and meaning of statutes dealing with similar subject matter. Consistent with what I have said about the implications of FIPPA’s definition of personal information for interpretation of PIPA’s definition, it is helpful to note that PIPEDA’s definition is, for the purposes of this discussion, essentially the same as PIPA’s. Neither of them expressly limits “personal information” to that which is “recorded”.

[27] Like PIPA, PIPEDA defines “personal information” as “information about an identifiable individual”, with no mention of the word “recorded”.¹⁷ The legislative debate over PIPA acknowledges that it was enacted in the context of PIPEDA’s earlier passage.¹⁸ PIPEDA purports to prevail over any provincial private sector privacy law governing commercial activities unless the federal Cabinet has declared that law to be substantially similar to PIPEDA, a declaration that the Cabinet has made in relation to PIPA.¹⁹

[28] It is reasonable to accept, therefore, that PIPA’s drafters and, more important, the Legislature, were aware that PIPEDA did not expressly require that information be “recorded” for it to qualify as personal information for PIPEDA’s purposes. I also note that, before PIPA was tabled in the Legislature, the Privacy Commissioner of Canada, who is responsible for PIPEDA’s enforcement, had ruled that “personal information” under PIPEDA is not limited to recorded personal information, thus stating what the law, PIPEDA, meant.²⁰ It is

¹⁶ At the time of PIPA’s passage, PIPEDA only applied to federal works, undertakings and businesses. It was later extended to organizations’ collection, use and disclosure of personal information in the course of commercial activities in a province or territory that does not have legislation that the federal Cabinet has declared to be substantially similar to PIPEDA.

¹⁷ Section 2(1), PIPEDA.

¹⁸ British Columbia, Legislative Assembly, *Official Report of Debates (Hansard)*, 14, No 12 (30 April 2003) at 6351.

¹⁹ PIPA has been declared substantially similar: *Organizations in the Province of British Columbia Exemption Order*, SOR/2004-220.

²⁰ “PIPEDA in brief” (last modified May 2019), online: Office of the Privacy Commissioner of Canada <www.priv.gc.ca/en/privacy-topics/privacy-laws-in-canada/the-personal-information-protection-and-electronic-documents-act-pipeda/pipeda_brief/#_h2>.

reasonable to assume that the Legislature was aware of the state of the law under PIPEDA when passing PIPA.

[29] Local 114 argued that many of PIPA's provisions (such as those concerning access, correction, accuracy and retention, under ss. 23, 24, 33 and 35) could not be "performed" if the personal information were not recorded.²¹ It noted that ss. 23 and 24 set out conditions for access to and correction of personal information that is under an organization's "control".

[30] As I understand it, Local 114 asks how it would be possible for an organization to provide access to, sever or annotate personal information that may exist only in someone's memory. The argument is that the wording of ss. 23, 24 and 34 suggests that an organization has first collected or compiled personal information in a retrievable (recorded) manner, so that it is able to respond meaningfully to requests for access or correction. I acknowledge the point but do not consider it to be persuasive, much less determinative, of the interpretation of "personal information".

[31] In this respect, I note that the collection, use and disclosure provisions in PIPA do not turn on the concept of "control". They set out conditions for an organization's handling of personal information in a way that can apply equally to recorded and unrecorded information. Order P10-01²² is an example of this. By viewing the contents of the driver's licence, the organization, through its employee — who could have recorded that information but did not — collected that personal information. If the employee had, at the end of his or her shift, from memory verbally disclosed that same information, this would have been a disclosure of "personal information".

[32] Ultimately, while I acknowledge Local 114's points about these aspects of PIPA, I am not persuaded that they drive one to the conclusion that the word "recorded", which is expressly included in FIPPA's comparable definition, must be read into the PIPA definition of "personal information". I am not, in other words, persuaded that the Legislature intended this, when it could have said so expressly, as it did in FIPPA.

[33] When one views the PIPA definition in its statutory context, and in the context of the Legislature's choice, in FIPPA, to expressly require that information about an identifiable individual be "recorded", I conclude that the grammatical and ordinary sense of the definition is that "personal information" is not limited to information that is recorded. PIPA can, therefore, apply where an organization collects or compiles information about someone without recording it.

²¹ Local 114's response submission, paras. 64-72

²² Order P10-01, 2010 BCIPC 7 (CanLII).

[34] It bears noting that situations involving unrecorded personal information are likely to be the exception rather than the rule. To give only one example, prudent management standards favour the recording of personal information, whether collected or compiled, so that among other things an organization has a record, that is, it has verifiable information, on which to base its decisions and be accountable for them. The exceptional nature of these kinds of situations means that an organization's compliance with the rights of access and correction, under ss. 23 and 24, will not often arise in relation to unrecorded personal information. In any case, the language of those provisions, and of the accuracy duty under s. 33, is such that organizations will be able to comply in substance if the need arises.²³

[35] In conclusion, I find that the definition of "personal information" in PIPA includes information about an identifiable individual, even if that information is not recorded information.

The verbal statements

[36] As set out in the fact report, the PIPA complaint is about the following three verbal statements, which the complainant alleges the respondent made:

- The respondent told others that she had been harassed by the complainant, although the investigation had concluded that the respondent's complaint was unfounded (I refer to this below as the "complaint upheld statement");
- The respondent told Unifor National that the complainant was improperly assigning work ("work assignment statement");
- The respondent told an arbitrator why the complainant did not attend an arbitration hearing in September 2016 ("arbitration statement").

Complaint upheld statement

[37] The complainant complained that, in the fall of 2016, the respondent told other staff in the office that her bullying and harassment complaint had been upheld, although, he said, the investigator had found that the complaint was not substantiated.²⁴

[38] The respondent denied making this statement. She added that she did not think she would have told anyone her bullying and harassment complaint was

²³ As an example, if an organization's customer somehow learns that the manager of the organization holds certain opinions about the customer's behaviour, the customer could ask the organization to correct that information, with the organization presumably directing the manager to record her opinions, so the organization can consider the correction requested.

²⁴ Complainant's affidavit, para. 11.

upheld because Unifor National had told her and the complainant that the complaint was not substantiated.²⁵

[39] The complainant did not say how he knew that the respondent made this alleged statement. He also did not say he heard the respondent make it. He also provided no direct evidence from other staff to support his complaint. Local 114 provided evidence from other Local 114 staff that the respondent was never heard to make any statements to other staff about the bullying and harassment complaint.²⁶

[40] I am not persuaded from the evidence that the respondent made the complaint upheld statement. I will, therefore, not consider it further.

Work assignment statement

[41] The respondent said it “came to [her] attention” that the complainant had assigned union work to a non-unionized employee at the Unifor National office.²⁷ The respondent said that she confirmed with Unifor National that this individual was doing union work. She said that, by raising the issue, she wished to avoid a possible grievance about improper contracting out. She said she does not recall speaking to the complainant about this, but acknowledged it is possible she brought it to his attention. She said that she did not regard it as a highly significant issue.²⁸

[42] The complainant said that the respondent told him that she had spoken to Unifor National staff about him improperly assigning union work to a non-union staff member.²⁹

[43] The respondent did not say how the information about the work assignment came to her attention or when this incident occurred. However, as noted, she did state that she confirmed with Unifor National that this individual was doing union work.

[44] On the balance of probabilities, I conclude that the respondent acquired information about the complainant’s actions in the workplace. I also accept that the respondent verbally disclosed the work assignment information about the complainant to Unifor National. I conclude that this information, which was about his assigning of work to another individual, is the complainant’s personal information.³⁰

²⁵ Respondent’s affidavit, paras. 35, 40-42.

²⁶ Representative’s affidavit, para. 35; Local 114’s president’s affidavit, para. 36. c. and e.; Local 114’s secretary treasure’s affidavit, para. 27. c. and d.

²⁷ Respondent’s affidavit, para. 48.

²⁸ Respondent’s affidavit, paras. 47-50.

²⁹ Complainant’s affidavit, para. 15.

³⁰ I discuss my reasons for this conclusion below.

Arbitration statement

[45] The complainant said that he was to attend a Unifor National labour arbitration hearing in September 2016. He said that, before the hearing, he told Local 114 that he would not be attending. He said that, after the hearing, the arbitrator called him to say that the respondent had told the arbitrator and others present at the hearing that the complainant did not attend because he “was off seriously ill” and that he “was not well at all”. The complainant said this was false personal medical information about him.³¹

[46] The respondent said she was scheduled to represent Local 114 at the arbitration hearing. She said the complainant was supposed to attend on behalf of Unifor National but he did not appear. She did not know why he was not there. She was concerned about how the complainant’s absence would reflect on him, Local 114 and Unifor National. Since she could not think of any other reason why he would be absent, she believes she “ultimately did indicate” to the arbitrator the complainant was ill, even though she was not sure that was the case. She said that she did not believe she implied that he was seriously ill. She said she later learned that the complainant did not attend the arbitration due to a scheduling conflict.³²

[47] I accept that the respondent told the arbitrator that the complainant was ill and that was why he did not attend the arbitration. I find that this statement was false, as there is no evidence before me that it had any objectively determinable factual basis. The respondent did not make this statement about the complainant based in whole or in part on factual information, *i.e.*, on facts that are objectively observable or ascertainable by some means, including personal observation. It was, I find, an outright falsehood and the respondent’s assertion about her motive in making this up does not change the fact that her statement was entirely false. I find that the respondent made this statement.

[48] I also conclude that information contained in this statement, although false, is the complainant’s “personal information”. The information is qualitative, in the sense that it conveys someone’s views or opinion about the complainant’s actions and his conduct and is thus “about” him. The question remains, however, of whether PIPA applies to it.

Scope of PIPA - s. 3(2)(a)

[49] Local 114 argued that the respondent was acting in a personal capacity when she collected and disclosed the unrecorded personal information at issue,

³¹ Complainant’s affidavit, para. 14.

³² Respondent’s affidavit, paras. 44-46.

for her personal use. In Local 114's view, therefore, under s. 3(2)(a), PIPA does not apply to this personal information.³³

[50] The complainant disagreed, arguing that his personal information was about a workplace issue. In his view, it was collected, used and disclosed for an "employment purpose" and is, therefore, not excluded from PIPA.³⁴

[51] I will consider next whether the unrecorded personal information in the work assignment statement and the arbitration statement is excluded from the scope of PIPA under s. 3(2)(a). Section 3(2)(a) reads as follows:

Application

3 (2) This Act does not apply to the following:

- (a) the collection, use or disclosure of personal information, if the collection, use or disclosure is for the personal or domestic purposes of the individual who is collecting, using or disclosing the personal information and for no other purpose;

...

Work assignment statement

[52] Local 114 argued that the statement about the "improper assignment of work" was not the complainant's personal information, as it is not "about" him in a personal capacity.³⁵

[53] I disagree with Local 114. The information at issue concerns the way the complainant performed his work and is "about" him as an identifiable individual. The suggestion that no personal information is involved because the statement was not "about" the complainant in a "personal capacity" — whatever that means — is not persuasive.

[54] Previous PIPA decisions do not support drawing such a line. Notably, in Order P12-01,³⁶ Commissioner Denham rejected the notion that "personal information" under PIPA is narrowly conceived and that it aims only to deal with intimate, private information. In that workplace-related decision, she rejected the argument that the Legislature intended only to "create a zone of 'personal privacy'", a realm described in *NAV Canada* as concerned with "intimacy, identity, dignity and integrity of the individual", noting that, if this were so, "then very little information about an individual in his or her capacity as an employee

³³ Local 114's response submission, paras. 80-104.

³⁴ Complainant's reply submission, para. 25.

³⁵ Local 114's response submission, para. 178.c.

³⁶ Order P12-01, 2012 BCIPC 25 (CanLII).

would be considered personal information.”³⁷ Consistent with this and other earlier decisions, I decline to interpret “personal information” as limited to information about someone in her or his “personal” capacity, even in the workplace.³⁸

[55] Alternatively, Local 114 argued, the information is “work product information” and thus excluded from the definition of personal information. Again, I disagree. The complainant did not prepare or collect the information at issue, so it does not meet PIPA’s definition of “work product information”, which only encompasses information “prepared or collected by an individual...as part of the individual’s ... responsibilities or activities related to the individual’s ... employment.”³⁹

[56] In this case, Local 114 has accepted that the information is about the complainant’s workplace actions — about his allegedly “improper assignment of work” — and has argued that his alleged actions raised a legitimate operational issue. Local 114 said that the contracting out of bargaining unit work to non-bargaining unit employees is a fundamental job security issue for all unionized employees.⁴⁰

[57] The respondent’s evidence is that, initially, she and the complainant had a good working relationship but their professional relationship deteriorated markedly over time, particularly after the respondent complained to Local 114’s managers about the complainant’s conduct.⁴¹ The respondent also said that she wished to identify and prevent a situation that might lead to a grievance and that she thought it was in the interests of Unifor National to raise the issue.⁴² The respondent recounted several incidents involving the complainant which she described as troubling and which, she said, made her feel “humiliated, harassed and unsafe.” In one of these incidents, she said the complainant “dressed [her] down in front of other staff for assigning union work to the same non-union employee.”⁴³

³⁷ Order P12-01, at para. 48. *Canada (Information Commissioner) v Canada (Canadian Transportation Accident Investigation and Safety Board)*, 2006 FCA 157 [NAV Canada], leave to appeal denied, 2007 CanLII 11607 (SCC).

³⁸ In saying this, I am, of course, aware of the fact that PIPA has special rules for the collection, use and disclosure of “employee personal information.” The definition of that term, and the rules relating to it, do not undercut the view that “personal information” need only be “about an identifiable individual” and is not limited to information about an individual in a “personal capacity”.

³⁹ PIPA’s provisions related to the work product concept bolster the view that the personal information in issue here was not the complainant’s “work product”.

⁴⁰ Local 114’s response submission, para. 166.

⁴¹ Respondent’s affidavit, paras. 11-21.

⁴² Respondent’s affidavit, para. 50.

⁴³ Respondent’s affidavit, paras. 13.f, 19-20, 47-50.

Arbitration Statement

[58] Local 114 argued that the respondent, in saying that the complainant was ill, wanted to “protect” Unifor National’s reputation.⁴⁴ The respondent said she wondered if the complainant’s absence might be due the release of the investigator’s report one week earlier. She said she was concerned about how the complainant’s absence might reflect on him, Unifor National and Local 114.⁴⁵

Findings

[59] I accept that the work assignment and arbitration incidents arose in the workplace and flowed from work-related activities. However, Local 114 did not explain how the respondent had a work-related duty to tell Unifor National that its employee, the complainant, had assigned union work to a non-union employee. Local 114 also did not explain how the respondent had a work-related duty to explain to the arbitrator why the complainant had not attended the arbitration. Indeed, it is not clear why she had to say anything to the arbitrator about the complainant’s absence.

[60] Local 114’s after-the-fact justification of the disclosure of the work assignment and arbitration information is not persuasive. There is no evidence, for example, from the respondent’s supervisors, or in the form of a job description, that it was part of the respondent’s job to alert Unifor National about its employee’s conduct or to justify the complainant’s absence from the arbitration. Local 114 also did not explain how it was authorized by ss. 14(c), 15(1)(c) and (h), 17(c) and 18(1)(c) and (o) to use and disclose the information in question.⁴⁶ Local 114 has not provided me with enough detail to satisfy me that the respondent had a work-related duty to disclose either the work assignment information or the arbitration information.

[61] Based on the entirety of the evidence before me, I conclude that the respondent was not acting in a work-related capacity for Local 114 in collecting, using and disclosing the work assignment and arbitration information. Rather, the evidence clearly establishes that she was acting on her own account in making the disclosures, in the context of the clearly very poor and fraught relationship with the complainant, in order to make trouble for the complainant. This finding applies to both the work assignment and arbitration statements. Thus, I find that the respondent was collecting, using and disclosing the personal information at

⁴⁴ Local 114’s response submission, paras. 161-162.

⁴⁵ Respondent’s affidavit, paras. 44-46.

⁴⁶ Sections 14(c), 15(1)(c) and (h), 17(c) and 18(1)(c) and (o) authorize an organization to use and disclose an individual’s personal information where it is authorized or required by law or for purposes related to an investigation or proceeding, if it is reasonable to expect that using or disclosing the information with the individuals’ consent would compromise the investigation or proceeding.

issue for personal purposes and that both types of information are excluded from the scope of PIPA under s. 3(2)(a).

CONCLUSION

[62] I found above that PIPA applies to unrecorded personal information. I also found that the evidence does not establish that one of the alleged verbal statements was made and that the unrecorded personal information in the other two verbal statements is excluded from the scope of PIPA under s. 3(2)(a). In light of these findings, it is not necessary to consider the remaining issues.

[63] I emphasize that my conclusion about s. 3(2)(a) is fact-specific, not a general observation about the scope and application of that provision. I also note, strictly in passing, that my findings in this case do not suggest that there is a gap in the law. This decision does not mean that an organization's employees, managers or owners are free to fabricate personal information about employees or customers, since there may be, for example, employment law consequences, consequences under a collective agreement or consequences under the law of defamation.

[64] Section 52(3) of PIPA says that I “may”, by order, require an organization to do one or more of the things listed in ss. 52(3)(a)-(f). In the circumstances of this case, I decline to make an order under s. 52(3)(e).⁴⁷

October 21, 2019

ORIGINAL SIGNED BY

Celia Francis, Adjudicator

OIPC File Nos.: P17-69103
P17-69107

⁴⁷ In Order P06-03, 2006 CanLII 32981 (BC IPC), former Commissioner Loukidelis also declined to make an order.