



Order P20-02

**COURTENAY-ALBERNI RIDING ASSOCIATION
OF THE NEW DEMOCRATIC PARTY OF CANADA**

Michael McEvoy
Information and Privacy Commissioner for British Columbia

April 17, 2020

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Summary: In this companion order to Order P19-02, the Commissioner finds that the organization failed to comply with PIPA when it collected and used the complainants' personal information without their consent. He found, however, that the organization complied with its duty under s. 23(1) to respond to the complainants' questions about how the organization had collected, used and disclosed their personal information. In conclusion, the Commissioner determined that it was not necessary to order the organization to stop collecting or using the complainants' personal information. However, he ordered the organization to destroy any of the complainants' personal information in its control and to provide an affidavit confirming the destruction was complete.

Statutes Considered: *Personal Information Protection Act*, ss. 23(1), 24, 52(3)(a), 52(3)(e), 52(3)(f), 52(4) and 53.

INTRODUCTION

[1] This decision deals with a complaint jointly made by two individuals, under the *Personal Information Protection Act* (PIPA), about the collection, use and disclosure of their personal information by the Courtenay-Alberni Riding Association of the New Democratic Party of Canada (organization). In Order P19-02, I disposed of the organization's argument that PIPA did not apply to its activities, by finding that PIPA does apply.¹ The inquiry under section 50 of PIPA

¹ Order P19-02, 2019 BCIPC 34. The organization's initial submission states, at paragraph 1, that it "disagrees with" Order P19-02 and that its submissions are made "without prejudice to its ability to challenge" that decision.

into the complaint continued with submissions from the organization and from the complainants, and this decision disposes of the inquiry issues.

[2] The facts set out below are taken from the Investigator's Fact Report, which this Office provided to the parties on September 12, 2019.²

[3] On February 21, 2018, the organization sent an email to the personal joint email address of the two complainants in this inquiry.³ The email invited them to attend a "meet and greet" event with the leader of the federal party. One of the complainants wrote to Gordon Johns, the local Member of Parliament on February 24, 2018, copying the federal party in Ottawa. The letter expressed concern about how the organization obtained their personal email address. It also expressed concern about "how your organization came into possession of our personal information."

[4] On March 2, 2018, Gordon Johns responded to the complainants, telling them that his constituency office had taken steps to reach out to the "NDP Party office" for follow-up.⁴ On April 15, 2018, having received no further response from Gordon Johns, the organization or the New Democratic Party of Canada (the federal party), one of the complainants wrote to this office and asked for an investigation into the organization, alleging both complainants' privacy had been breached. On October 23, 2018, the complainants clarified that they were complaining to this office about the collection and use of both individuals' personal information.

[5] On that same date, the organization referred this office's investigator to the federal party in Ottawa. In a November 7, 2018 letter to the investigator, the federal party took the position that "PIPA does not apply to the activities of Canada's New Democrats", adding that the OIPC "does not have jurisdiction to investigate this matter." In a further letter, dated November 23, 2018, the organization took the position that "the activity of federal political parties can, in fact, be subject to" the *Personal Information Protection and Electronic Documents Act* (PIPEDA), which is federal private sector privacy legislation, adding "[i]t is therefore our position that, where PIPEDA applies, federal political parties fall under the exception laid out in PIPA at s. 3[2](c)."

² Order P19-02 also sets out the background to this inquiry in some detail.

³ The Investigator's Fact Report this Office issued for this inquiry states that the organization also emailed the complainants on February 26, 2018, reminding them of the upcoming meet and greet with the federal NDP leader. As noted in Order P19-02, there is evidence from the complainants that they received a third email, on February 27, 2018, again reminding them about the upcoming meet and greet event. In light of the material before me, nothing turns on whether the organization sent one, two or three emails to the complainants, but I note that the organization's initial and reply submissions acknowledge, at paragraph 6 of the former and paragraphs 6 and 7 of the latter, that the further emails were sent.

⁴ Investigator's Fact Report, paragraph 4.

[6] In Order P19-02, I found that the federal party sent a letter dated December 18, 2018 to each of the complainants, stating that although PIPA does not apply to “Canada’s NDP and its electoral district associations... we have chosen to respond to your request in this instance.” In Order P19-02, I observed that the federal party’s letter told the complainants that their names, address, telephone number and email address were held by “our organization”.⁵

[7] On September 12, 2019, this Office issued a notice of hearing to the organization, the complainants, the BC Freedom of Information and Privacy Association (FIPA), the Ministry of Attorney General of British Columbia, and the Department of Justice of Canada.⁶

Preliminary matter

Charter of Rights Issue Is Abandoned

[8] In the hearing leading to Order P19-02, the organization said that an issue to be decided was whether the provisions of PIPA impose unjustified limits on the right to vote and the freedom of expression guaranteed by the *Canadian Charter of Rights and Freedoms*. The organization advanced general arguments but submitted no evidence. In its reply submission at the time, the organization said that any consideration of that *Charter* issue would properly take place if the inquiry proceeded to the second stage, and it reserved the right to provide submissions on the issue at that time.

[9] The *Charter* issue was included in the notice of hearing for this second stage of the inquiry. However, in its initial submission, the organization states that it “will not be pursuing *Charter* arguments at this second stage of the inquiry.”⁷

[10] Because the organization has abandoned this issue, no more needs to be said about it.

ISSUE

[11] The issues to be decided in this second stage of the inquiry are as follows:

1. Did the organization’s collection, use and/or disclosure of the complainants’ personal information comply with PIPA?
2. Did the organization comply with s. 23 of PIPA?

⁵ A copy of this letter is also included in the complainants’ submission at this stage of the inquiry.

⁶ The notices to the last three were given under s. 48 of PIPA.

⁷ Paragraph 16. In light of the organization’s abandonment of the issue, the Attorney General of British Columbia and the BC Freedom of Information and Privacy Association chose not to participate in this second stage of the inquiry. The Department of Justice of Canada also did not participate.

DISCUSSION

Collection, Use and Disclosure of Personal Information

[12] The organization had custody and control of the complainants' personal information, in the form of their names, residential address, home phone number and email addresses, each of which qualifies as "personal information" as defined in PIPA.⁸

[13] With certain exceptions, PIPA prohibits an organization from collecting, using or disclosing an individual's personal information without the individual's consent. It is reasonable to view the core of the complainants' concern to be that they did not consent to the organization's collection of their personal information, and this amounted to a violation of PIPA.

[14] It is obvious from their submissions in this inquiry that the complainants deny having provided their personal information directly to the organization, much less that they gave their consent as required under PIPA, or that the organization obtained their personal information otherwise in compliance with PIPA. Nor has the organization contended at this stage that consent was given or that it otherwise complied with PIPA in collecting and using the complainants' information.

[15] To the contrary, the organization submits that "any collection or use of personal information occurred in error and that error was remedied by way of a correction pursuant to s. 24" of PIPA.⁹ The organization acknowledges that it received the complainants' information "when it updated its contact list from contact information held by Canada's NDP".¹⁰ It also acknowledges that it used the complainants' personal information to send them an email, "in late February 2018", that was intended to be sent to members of the "Parksville Constituency Association email list",¹¹ not individuals on the organization's contact list.¹²

⁸ See, for example, page 1 of the complainants' submission, to which is appended correspondence from the organization that confirms it had custody and control. Also see paragraph 8 of the October 30, 2019 affidavit of Kevin Brown, the organization's chief executive officer, which establishes that the organization received the complainants' contact information from the federal party, with the federal party's December 18, 2018 letter confirming that it possessed the names, home address, telephone number and email address of the complainants. It is reasonable to infer, as I do, that the "contact information" that the organization acquired from the federal party consists of this contact information.

⁹ Paragraphs 1 and 9.

¹⁰ Initial submission, paragraph 5, and paragraph 8 of the Brown affidavit.

¹¹ According to the Brown affidavit, at paragraph 4, the Parksville-Qualicum BC NDP Constituency Association is "not affiliated" with the organization, but the two "share a large number of common volunteers including myself given the similar values and communities represented by both."

¹² Initial submission, paragraph 6, and paragraph 7 of the Brown affidavit. At paragraph 6, his evidence is that, following an inquiry from this office, he reviewed the contact lists of the Parksville-Qualicum BC NDP Constituency Association and "confirmed that the Complainants' contact information was not in any contact list held by" that association, and he "could find no evidence that the Complainants had recently been removed or unsubscribed from any contact lists." The

[16] The organization adds this in its initial submission:

11. When the complainants raised the concern about the email sent by the organization indicating they had not provided consent for the collection of their personal information, the organization promptly investigated upon being made aware of the concerns, found the collection occurred in error, and corrected that error as soon as reasonably possible.

12. The organization notes that in this matter the improper collection and use of personal information was a matter of mistake, minor in nature, and that the organization and its volunteers made immediate, good faith efforts to remedy that mistake in compliance with the Act.¹³

[17] In light of the evidence and submissions before me, and the organization's concession that it collected and used the personal information in error, I find that the organization's collection and use¹⁴ of the complainants' personal information did not comply with its duty under Part 3 of PIPA to obtain the consent of the complainants in the manner required under that Part.

Compliance with s. 23(1) of PIPA

[18] Section 23(1) of PIPA states that an organization must, if an individual requests it, provide the individual with the individual's personal information under the control of the organization, information about the ways in which that personal information has been and is being used by the organization, and the names of the individuals and organizations to whom it has been disclosed by the organization.

[19] As noted earlier, the February 24, 2018 letter that one of the complainants sent to Gordon Johns explicitly cited s. 23 of PIPA in seeking information about use of the complainants' personal information. The letter set out these questions:

- exactly what information has your organization collected about myself and my wife?
- when and how was our information obtained and where was it sourced?
- who has our personal information been shared with?
- who has had and will have access to this information?
- how is that information currently being used by your organization, and how has it been used up to this point?

[20] The organization submits that, during the course of the "inquiry into this matter", it has "responded as fully as possible to the complainants request and

complainants did not lodge a complaint about this association, but in passing I note that it appears, based on this evidence certainly, that Parksville-Qualicum BC NDP Constituency Association does not have any of the complainants' personal information in its custody or under its control.

¹³ These submissions find support in the Brown affidavit, paragraph 8.

¹⁴ For clarity, the improper use consisted of the use of their email address to contact them regarding the so-called "meet and greet" mentioned earlier.

expressed its regret that the complainants were placed on its email lists in error.”¹⁵ It notes that the federal party and Gordon Johns’ office conducted internal investigations and, “[a]s a courtesy, these remedial efforts were explained to the Complainants.”¹⁶ The organization adds that it “previously applied to cancel the inquiry on the basis that the information requested has been provided to the Complainants during the course of this process, along with the remedial explanation referenced above”, such that it “has done all that it reasonably can in the circumstances to provide the complainants with the requested personal information, to acknowledge and correct the error related to the collection and use of their email address by the Organization”, and so on.¹⁷

[21] In its reply submission, the organization objects to the inclusion of any of the communications that occurred during attempts to settle the complaint, asking that “references to any copies of correspondence from May 2019 between the parties” be removed from the complainants’ submission.¹⁸ The Registrar of Inquiries has redacted the portions of the complainant submission that reflect, I infer, the settlement communications to which the organization refers. It appears, however, that some of the unredacted material appended to the complainants’ submission may fall into the category of settlement communications, although that is not entirely clear from the material before me (including the organization’s reply). Nonetheless, in light of the organization’s objection, I have decided it is not appropriate to consider any of the appended material.

[22] Where does this leave the evidentiary record before me as it relates to the organization’s compliance with the complainants’ s. 23(1) request for information about how the organization collected, used and disclosed their personal information? Again, the organization argues that, during “this process”, it has done all that it reasonably can in the circumstances to comply. It argues that “it is not clear what further utility any order” against it might have.

[23] The challenge is that, apart from referring to “remedial efforts” that were explained to the complainants by the federal party and Gordon Johns’ Member of Parliament office — who are not involved in this inquiry — the organization has provided little in the way of particulars, or supporting evidence, for this inquiry about what it may have done to comply with its s. 23(1) duty.

[24] That said, the evidence does allow me to conclude how the organization collected the complainant’s personal information. It appears that one of the complainants emailed Gordon Johns in his role as Member of Parliament, expressing concerns about a matter of public interest. What followed was,

¹⁵ Initial submission, paragraph 13.

¹⁶ *Ibid.*

¹⁷ Initial submission, paragraphs 14 and 15.

¹⁸ Reply submission, paragraphs 4 and 5.

according to the organization, an error by the Member of Parliament's office in adding the complainants' email address to the organization's distribution list.¹⁹

[25] The evidence enables me to conclude that the federal party made some effort to explain what personal information it had, and there is evidence that the organization also did so, in relation to the complainants' email address, at least. In addition, the organization now says, as indicated above, that it has responded as fully as possible to the complainants' request and expressed its regret that they were placed on its email lists in error. The upshot is that, in combination, the federal party and the organization have provided the complainants with information that in substance sufficiently responded to their s. 23 request and, thus, satisfies s. 23(1). I therefore conclude that the organization has complied with its s. 23(1) duty.

Organization's Submissions on Section 24

[26] At paragraph 10 of its initial submission the organization submits, quoting s. 24 of PIPA, that "it immediately corrected any error in its collection of the complainants' contact information pursuant to s. 24" by removing the complainants' email address from its mailing list. Compliance with s. 24 is not listed as an issue in this inquiry. Section 24 explicitly focuses on requests to correct errors or omissions in personal information, not whether an organization has destroyed improperly collected personal information. In any case, as noted below, the organization states it has removed only one aspect of the complainants' personal information, namely their email address. It leaves unaddressed other personal information at issue in the complaint, that being the complainants' names, residential address and home phone number.

CONCLUSION

[27] As Order P19-02 affirms, PIPA applies to the organization and the organization is taken to know that it must comply with that law. I have found that it collected and used the complainants' personal information in contravention of PIPA and the organization has conceded that it made a mistake in collecting and using the complainants' personal information. In light of that concession, and the destruction order made below, I conclude that an order under s. 52(3)(e) of PIPA, requiring the organization to stop collecting or using personal information in contravention of PIPA, is not necessary in the circumstances.

[28] The organization has argued that, given the steps it took to rectify what took place, there is no utility to making an order against them. I do not agree. Again, I have found that the organization collected and used the complainants' personal information in contravention of PIPA. For that reason, given the evidence before me, an order to destroy all of the complainants' personal information in the organization's control is appropriate.

¹⁹ Response submission, page 2.

[29] It must be remembered that the complainants' concerns relate to their names, home address, telephone number and email address. This is consistent with the personal information the federal party told the complainants it had about them in a December 18, 2018 letter. However, the organization's chief executive officer's affidavit evidence in this inquiry is that the organization took steps to ensure only that "the Complainants' email address was removed from the Organization's email list"²⁰ — a clearly narrower subset of personal information the organization has about them.

[30] I am not satisfied, therefore, that the organization has ensured that it has destroyed all the complainants' personal information, noting again that they are clearly concerned about more than their email address.

ORDERS

[31] Pursuant to s. 52 of PIPA, I make the following orders:

1. Under s. 52(3)(a), I confirm that the organization has complied with its duty under s. 23(1) of PIPA.
2. Under s. 52(3)(f), I require the organization to destroy all of the complainants' personal information in the organization's control, including their names, home address, telephone number and email address.
3. Under s. 52(4) of PIPA, I require the organization to provide the complainants with an affidavit confirming that the organization has complied with the order under s. 52(3)(f). The organization must concurrently provide me with a copy of that affidavit.

[32] Pursuant to s. 53(1) of PIPA, the organization must comply with the ss. 52(3)(f) and 52(4) orders made here within 30 days after being given its copy of this order. Taking notice of the present states of emergency in the province, I retain conduct of this matter in case the organization wishes to seek an extension of the 30-day period.

April 17, 2020

ORIGINAL SIGNED BY

Michael McEvoy,
Information and Privacy Commissioner for British Columbia

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²⁰ Paragraph 9 of the Brown affidavit.