



Order P24-01

STRATHCONA COMMUNITY POLICING CENTRE

Erika Syrotuck
Adjudicator

January 10, 2024

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Summary: An applicant requested his personal information from the Strathcona Community Policing Centre. The Centre provided some information to the applicant but refused access to the remaining information under ss. 23(4)(a), (c) and (d) of the *Personal Information Protection Act*. The adjudicator found that the Centre was required to refuse to disclose most of the information under ss. 23(4)(c) and/or (d). The adjudicator found that s. 23(4)(a) did not apply. However, the adjudicator found that s. 23(5) required the Centre to disclose some portions of the information in dispute to the applicant.

Statutes Considered: *Personal Information Protection Act*, [SBC 2003], c. 63, ss. 1, 23(4)(a), (c), (d), and 23(5).

INTRODUCTION

[1] An applicant requested that the Strathcona Community Policing Centre (the Centre) provide him with his personal information relating to a workplace investigation.¹

[2] In response, the Centre provided some information relating to the investigation but refused access to the remaining information under ss. 23(4)(a)(disclosure reasonably expected to threaten the safety or mental or physical health of an individual other than the applicant), 23(4)(c)(personal information about another individual) and 23(4)(d)(disclosure would reveal the identity of an individual who provided personal information about another individual) of the *Personal Information Protection Act* (PIPA).

¹ The access request was initially made under the *Freedom of Information and Protection of Privacy Act* (FIPPA), which only applies to public bodies. No party argued that the Centre is a public body to which FIPPA applies.

[3] The applicant requested that the Office of the Information and Privacy Commissioner (OIPC) review the Centre's decision to refuse access. Mediation did not resolve the issues and the matter proceeded to inquiry.²

[4] The information at issue is portions of a 17-page investigation record (the Investigation Record).

Background and preliminary issues

[5] The applicant was an employee of the Centre. During his employment, the Centre investigated a bullying and harassment complaint made against him by three individuals (Complaint). The Investigation Record is essentially a timeline of the Centre's investigation of the Complaint.

[6] At some point during the investigation, WorkSafe BC became involved. WorkSafe BC found that the Centre conducted the investigation unfairly and ordered it to "discard the entirety of the non-compliant investigation." Both the applicant and the Centre provided me with a copy of the WorkSafe BC order.

[7] The Centre argues that, because it was ordered to "discard" the investigation, the Investigation Record "technically no longer exists as a record" and therefore the OIPC should not decide this matter.³ The Centre does not say that it no longer has control of the Investigation Record or that it no longer exists.

[8] The applicant says that the word "discard" in the WorkSafe BC decision does not require the Centre to discard all *documents* relating to the Centre's investigation. Rather, the applicant says that he clarified with the WorkSafe BC Prevention Officer that the requirement to "discard" was in reference to the *investigation*. In other words, the applicant says that the WorkSafe BC order requires the Centre to put aside the original investigation and initiate a new one.

[9] I prefer the applicant's interpretation because it better accords with the language in the WorkSafe BC order. In other words, I do not see how the word "discard" in the WorkSafe BC order required the Centre to destroy all documents related to the non-compliant investigation. Rather, "discard" clearly refers to requirement to put aside the original investigation. I do not see any conflict between the WorkSafe BC order and the applicant's access rights under PIPA. Therefore, I am not persuaded that I should not make a decision about the information in dispute.

² I note that, in its initial submissions, the Centre says it would welcome an opportunity for an in-person hearing. It did not explain why it would like an oral hearing. The notice of inquiry issued to the parties clearly indicated that the OIPC would conduct a written inquiry and I see no reason to depart from that.

³ Centre's initial submissions, page 1.

[10] Much of the applicant's submissions are about the fairness of the Centre's investigation. In addition, the applicant has also relied on provisions of the *Freedom of Information and Protection of Privacy Act* to support his arguments. The scope of this inquiry is limited to whether PIPA applies to the information in dispute. Although I have read and considered the parties' entire submissions, I will only comment on the portions relevant to the issues below.

ISSUES

[11] At this inquiry, I must decide whether the Centre is required to refuse to disclose the applicant's personal information under ss. 23(4)(a), (c) or (d) of PIPA.

[12] Under s. 51 of PIPA, it is up to the organization to prove that an individual has no right of access to their personal information.

DISCUSSION

Information at issue

[13] As I mentioned above, the information at issue is portions of the Investigation Record, which is essentially a timeline of the Centre's investigation.

[14] The Investigation Record is organized as a table. It contains three columns: "Date", "Author", and "Description". Each row documents some kind of event with respect to the investigation, such as a meeting, phone call, conversation, or interview.

[15] The Centre disclosed the entire "Date" and "Author" columns to the applicant, as well as a significant amount of information in the "Description" column. The remaining information in the "Description" column is the information in dispute in this inquiry.

Is the information in dispute the applicant's personal information?

[16] Section 23(1)(a) gives an individual the right to access their own personal information that is under the control of the organization, subject to some exceptions set out in s. 23(2) through s. 23(5). This means that, under PIPA, individuals may only access their own personal information. Therefore, the first question that must be answered is whether the information at issue is the applicant's "personal information" as PIPA defines that term.

[17] Under s. 1 of PIPA, "personal information" means information about an identifiable individual and includes employee personal information but does not include "contact information" or "work product information". These terms are also defined in s. 1 as follows:

"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.

[18] Neither the Centre nor the applicant expressly commented on whether the information at issue is the applicant's personal information.

[19] I find that the information in the Investigation Record is the applicant's personal information. It is identifiable because it is his name, details about his actions in the workplace and the complainants' thoughts and feelings about him. The applicant did not prepare or collect the information and so it is not his work product information. This information is not contact information because none of it is meant to enable the applicant to be contacted at the Centre.

[20] In conclusion, the information in dispute in the Investigation Record is the applicant's personal information.

Section 23(4) – mandatory refusal

[21] Section 23(4) requires an organization to refuse to disclose personal information in certain circumstances. The following provisions are relevant to this inquiry:

- (4) An organization must not disclose personal information and other information under subsection (1) or (2) in the following circumstances:
 - (a) the disclosure could reasonably be expected to threaten the safety or physical or mental health of an individual other than the individual who made the request;
 - ...
 - (c) the disclosure would reveal personal information about another individual;
 - (d) the disclosure would reveal the identity of an individual who has provided personal information about another individual and the individual providing the personal information does not consent to disclosure of his or her identity.

[22] The Centre provided me with a copy of the Investigation Record with the severed portions colour coded to indicate which exception applies to which severed portion.

[23] The colour coded version indicates that the Centre intended to claim all three exceptions over most of the information. For the information where the Centre only claimed one exception, clearly more than one could be relevant. For example, the Centre withheld the name of a complainant under (c) but their job title under (d). In other cases, the Centre applied different exceptions to what is essentially the same information. Therefore, deciding solely based on the Centre's severing could lead to a result that is both inconsistent and would undermine the mandatory nature of the exceptions.

[24] Further, in his submissions, the applicant addressed all the exceptions without regard to the Centre's colour coding. Accordingly, I see no unfairness to the applicant in considering all exceptions in respect of all the withheld information.

[25] For these reasons, I have decided to consider whether all of the exceptions apply to all of the severed portions.

Section 23(4)(d) – identity of an individual who provided personal information about another individual

[26] Section 23(4)(d) requires an organization to refuse to disclose information that would reveal the identity of an individual who has provided personal information about another individual and the individual providing the personal information does not consent to the disclosure of their identity.

[27] This provision applies where all three of the following parts are met:

1. An individual provided personal information about a person other than themselves;
2. Disclosure of the information would reveal the identity of the individual providing the information; and
3. The individual who provided the information does not consent to the disclosure of their identity.

[28] There are two circumstances in which an individual provided information about another individual, and I will address each in turn.

- i. Information provided by the complainants

[29] The Investigation Record contains the complainants' descriptions of interactions with the applicant, as well as the complainants' thoughts and feelings about the applicant. I found above that this information provided by the

complainants is the applicant's personal information. Therefore, the complainants' provided personal information about the applicant. The first part of s. 23(4)(d) is met.

[30] With respect to the third part, the Centre clearly indicates that the complainants do not consent to the disclosure of their identities, and the applicant does not dispute this. Given the sensitive nature of the information in dispute, it makes sense that the complainants would not consent to disclosing their identities. I find that the third part of s. 23(4)(d) is met.

[31] The only question that remains is whether the applicant's personal information, if disclosed, would reveal the identity of any of the complainants.

[32] The Investigation Record mostly refers to the complainants in an anonymized way (for example, Complainant 1 or C1 to refer to the first complainant). The Centre did not explain why it believes the portions it withheld would identify the complainants. The applicant says that he has never been provided with the identity of the complainants.

[33] In my view, even though most of the information is presented in an anonymized way, the interactions the complainants describe are so specific that the applicant would almost certainly be able to identify the complainant who provided that information. For example, a significant amount of the personal information in dispute is the complainants' descriptions of specific incidents and/or conversations involving the applicant. In some cases, a complainant provides the date on which a specific incident occurred. In other cases, the date can be easily inferred. For these reasons, I find that the portions of the Investigation Record that describe specific incidents and/or conversations, if disclosed, would reveal the identity of the complainant who provided that information.

[34] I am also conscious that some of the information provided by the complainants is expressed in their own words. In my view, each complainant has a distinct voice and style. I find that the way they have each presented their thoughts is likely to reveal their identity to the applicant. As a result, I find that, the portions of the Investigation Record that contain complainants' thoughts and feelings about the applicant, expressed in their own words, also meet the second part of s. 23(4)(d).

ii. Information provided by other individuals

[35] There is a small amount of information in the Investigation Record that was provided by individuals other than the three complainants.

[36] The individuals provided information that is about the applicant and another person. I have already determined that information about the applicant is

his personal information as PIPA defines that term. The fact that the information is also about another person does not alter that finding. Therefore, the first part of s. 23(4)(d) is met.

[37] Disclosure of some of this information would reveal the identity of the individuals who provided the personal information because the information in dispute includes their name and/or their initials.

[38] Finally, there is no evidence that the individuals who provided the personal information consent to the disclosure of their identity.

[39] As a result, I find that s. 23(4)(d) applies to the information that would reveal the identity of these individuals.

Summary – 23(4)(d)

[40] In summary, much of the applicant's personal information in the Investigation Record, if disclosed, would reveal the identity of the complainants or other individuals who provided personal information another individual. I find s. 23(4)(d) applies to this personal information.

[41] However, there is some of information that, if disclosed, would not reveal the identity of the complainants or the other individuals. For example, there is some high-level information about the nature of the complaints that, in my view, would not reveal the identity of the complainants if it was disclosed. There is also a file link and some information describing the steps the Centre took in the investigation that clearly does not meet any of the requirements of s. 23(4)(d). I will consider whether any of the other exceptions apply to this information.

Section 23(4)(c) – personal information about another individual

[42] Section 23(4)(c) requires that an organization refuse to disclose personal information if the disclosure would reveal personal information about another individual. The analysis under this provision does not involve deciding whether disclosure would unreasonably invade another person's privacy; it is enough that the information is the personal information of another individual.⁴

[43] The Centre says that the Investigation Record contains private and personal information about multiple individuals. It says that it severed portions of the Investigation Record in order to protect personal information.

[44] The applicant argues that since the information in the Investigation Record was collected as part of the Centre's investigation, it is "work product information"

⁴ Order P22-07, 2022 BCIPC 64 (CanLII) at para 44.

and therefore not personal information. The applicant says he is not interested in contact information.

[45] None of the information in dispute is contact information. It was prepared or collected during a workplace investigation. None of it was included to enable a person at a place of business to be contacted.

[46] I have divided the remaining types of information into three categories and will address whether each type of information is personal information, including whether it is “work product information.”

i. Information about the committee members and Executive Director

[47] A small amount of the information in the Investigation Record refers to the committee members who conducted the investigation. Because the committee members prepared or collected the information in the Investigation Record, the information about the committee members is “work product information” and is therefore excluded from the definition of personal information.

[48] In addition, I find that some information was collected by the Centre’s Executive Director in that capacity.⁵ I find that this is also “work product information.”

[49] I find that s. 23(4)(c) does not apply.

ii. information about other individuals

[50] In some cases, the complainants’ statements include information about individuals other than themselves and the applicant (I will refer to these individuals as Third Parties).

[51] This information is not “work product information” because the Third Parties did not prepare or collect the personal information.

[52] I find that the information about the Third Parties is identifiable information about them because it contains their names and details about them. Section 23(4)(c) applies to this information.

iii. Information not about an identifiable individual

[53] Above, I found that there is some information that did not fall into s. 23(4)(d) because it was not about another identifiable person. I find that this

⁵ The remaining information in dispute on the correspondence beginning on page 3 of the Investigation Record.

information is not the personal information of another individual for the same reason.

[54] In summary, s. 23(4)(c) applies to the portions of the Investigation Record that contain identifiable information about the Third Parties.

Section 23(4)(a) – threat to safety or physical or mental health

[55] Section 23(4)(a) requires an organization to refuse to disclose an applicant's personal information where the disclosure could reasonably be expected to threaten the safety or physical or mental health of an individual other than the person who made the request.

[56] It is well established that the phrase "could reasonably be expected to" means that the standard of proof is a reasonable expectation of probable harm. This means that an organization must show that the likelihood of the harm occurring is "well beyond" or "considerably above" a mere possibility.⁶ The amount and quality of the evidence required to meet this standard depends on the nature of the issue and the "inherent probabilities or improbabilities or the seriousness of the allegations or consequences."⁷ In addition, there must be a "clear and direct connection" between disclosure of the information in dispute and the harm alleged.⁸

[57] In Order P06-02, former Commissioner Loukidelis said that s. 23(4)(a) of PIPA should be approached in the same way as s. 19(1) of the *Freedom of Information and Protection of Privacy Act*.⁹ In the context of s. 19(1), past orders have said that a threat to mental health requires a threat of "serious mental distress or anguish," it is not enough that disclosure may cause a person to feel upset, inconvenienced or unpleasant.¹⁰

[58] The Centre's submissions indicate that it is concerned about the impact that disclosing the complainants' identities would have on their safety or physical or mental health.

[59] The information that remains in dispute (i.e., the work product information and the information that is not about an identifiable person) is not identifiable

⁶ *Ontario (Community Safety and Correctional Services) v Ontario (Information and Privacy Commissioner)* 2014 SCC 31 at para 54 citing *Merck Frosst v Canada (Health)* 2012 SCC 3 at paras 197 and 199.

⁷ *Ibid* citing *FH v McDougall*, 2008 SCC 53 at para 40.

⁸ *Lavigne v. Canada (Office of the Commissioner of Official Languages)*, 2002 SCC 53 at para 58. This principle has been adopted in many orders from the OIPC, for example Order F07-15, 2007 CanLII 35476 (BCIPC) at para 17.

⁹ Order P06-02, 2006 CanLII 32980 at paras 46-49.

¹⁰ Order F20-03, 2020 BCIPC 3 (CanLII) at para 21; Order 03-08, 2003 CanLII 49172 (BCIPC) at para 24.

information about the complainants and so I do not see how disclosure could reasonably be expected to threaten the complainants' safety or physical or mental health. I find that s. 23(4)(a) does not apply.

Section 23(5) - severance

[60] Under s. 23(5), if an organization is able to remove the information referred to in subsection 23(3)(a), (b) or (c) or 23(4) from a document that contains personal information about the individual who requested it, the organization must provide the individual with access to the personal information after the information referred to in subsection 23(3)(a), (b) or (c) or 23(4) is removed.

[61] Consistent with the above analysis, I have carefully considered whether any of the information to which I have found s. 23(4)(c) and/or (d) applies can be disclosed after removing information that would reveal:

- the identity of the complainants;
- the identity of the other individuals who provided personal information; and
- the personal information of any of the Third Parties.

[62] I have decided that some portions of the information in dispute can be disclosed to the applicant without revealing the above information. For the most part, these portions comprise the applicant's name and partial sentences and short phrases of a more factual nature. However, most of the information to which I have found ss. 23(4)(c) and/or (d) applies cannot be disclosed without revealing the above information.

[63] In conclusion, s. 23(5) requires the Centre to disclose some information in dispute to the applicant.

CONCLUSION

[64] For the reasons above, I make the following orders under s. 52 of PIPA:

1. I require the Centre to refuse the applicant access to the information in dispute that is not underlined under ss. 23(4)(c) and/or (d) of PIPA.
2. I require the Centre to give the applicant access to the information I have underlined in a copy of the Investigation Record provided to the Centre along with this order.
3. The Centre must concurrently copy the OIPC registrar of inquiries on its cover letter to the applicant, together with a copy of the severed Investigation Record.

[65] Under s. 53(1) of PIPA, the Centre must comply with these orders by February 22, 2024.

January 10, 2024

ORIGINAL SIGNED BY

Erika Syrotuck, Adjudicator

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