

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER

ORDER P2009-003

November 13, 2009

LONGLEY CONDOMINIUM SERVICES LTD.
&
CONDOMINIUM CORPORATION NO. 7910117

Case File Numbers P0888 & P0889

Office URL: www.oipc.ab.ca

Summary: The Complainant made a complaint to the Office of the Information and Privacy Commissioner that Longley Condominium Services Ltd. and Condominium Corporation No. 7910117 (the Organizations) had disclosed her personal information in the minutes of an annual general meeting of the condominium corporation.

The Adjudicator found that the minutes did not contain the personal information of the Complainant. In addition, she found that as the condominium corporation and the unit owners are the same legal entity under the *Condominium Property Act*, there was no disclosure when the minutes were provided to the unit owners.

Statutes Cited: AB: *Personal Information Protection Act* S.A. 2003, c. P-6.5 ss. 1, 4, 7, 20; *Condominium Property Act*, R.S.A. 2000 c. C-22 ss. 1, 17, 25, 28, 30, 32, 36, 37, 44 *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000 c. F-25 s. 4

Authorities Cited: AB: Orders P2006-004, P2006-008, F2007-021
Sopinka, John, et al. *The Law of Evidence in Canada* 2nd ed. Markham: Butterworths, 1999

I. BACKGROUND

[para 1] On January 18, 2008, the Complainant made a complaint that Longley Condominium Services Ltd. and Condominium Corporation No. 7910117 (the Organizations) disclosed her personal information in the minutes of an annual general meeting of the condominium corporation on December 5th, 2007. I understand that Longley Condominium Services Ltd. is an organization that has entered a management agreement with Condominium Corporation No. 7910117 under sections 1 and 17 of the *Condominium Property Act* (CPA) to manage the real and personal property of the condominium corporation and the common property.

[para 2] In a letter to this office dated April 22, 2008, the Complainant stated:

My concern is that both organizations have privacy breached me twice and have been getting away with it...

When I came to PIPA again in January 2008 it was because "they" privacy breached me again in writing to all unit holders. Again, they refuse to tell everyone their part in all of this as they keep driving up legal costs. Regardless the fact that we are in lawsuits with the Court of Queen's Bench I really do not believe they are justified by disclosing my personal information to everyone in the building. All they had to say was "Contact the Court of Queen's Bench if you want to see who the lawsuit is against. I have continually been humiliated in my home. Now the entire matter has come to the table in our investigation, this 4 year dispute was never caused by me. So they have gone out of their way to cause all this embarrassment to me for no reason. I have now read 2 separate privacy breach reports with the same repeated deceptions that both of these organizations are telling. I have not yet been allowed to defend myself in any of this. It is not right. Does this mean that my condo manager should be allowed to send an e-mail to the entire company I work for telling them about my lawsuit? I think there should be some protection. If anyone wants to know about my lawsuit they can get it from the courthouse themselves. I just keep witnessing abuse & attacks against me. And now the accusations they have made against me have proven unfounded. But this is information they keep to themselves & conveniently make me out to be this irresponsible trouble maker...

In the recent privacy breach, Longley & the Condo Board say they sent me letters requesting my condo fees. That was untrue. The only letter I received was from their lawyer & he was given those condo fees but refused to cash them for 6 months. Everyone involved on the other side of this case is not disclosing the correct information and it has been discouraging for me since I'm the one being attacked non-stop. Again, they say they follow the rules of PIPA but they continually demonstrate that they do not. They also try to blame one another (Longley vs Condo Board) for the disclosures. No one is taking responsibility or accountability for their actions or the truth of the matter. If they are allowed to disclose my personal information & their spin on this case then do I have the right to let everyone in our building know my side of things? Am I allowed to send copies of the actual lawsuits out to everyone? All the e-mails & letters for the initial 4 years that my insurance company & myself sent directly to Longley to get resolution to the problems that caused this nightmare? The fact they have constantly defied finding resolution or response to our requests? The movement of my funds to allocate to different parts of my account balance? The list of problems go on of what they did to cause harassment.

[para 3] The Organizations provided a letter in response on June 15, 2009. This letter states:

In regard to Case #P0888, our position remains unchanged from our previous responses to [the mediator]... Further, any disclosure made at the December 2007 Annual General Meeting of Condominium Corporation No. 7910117 in regard to [the Complainant] is a matter of public

record as a documented court case. This argument was made by the Condominium Corporation's lawyer to successfully defend [the Complainant's] original action against the Corporation.

Case #P0889

1. At no time has Longley Condominium Services Ltd. ... collected, used and / or disclosed "personal information" of the Complainant.
2. If any disclosure was made by the Organization or the Condominium Corporation, the disclosure was made by the Organization or the Condominium Corporation, the disclosure was excluded from the Act as the disclosure was in regard to public information related to a court action.
3. The Organization did not disclose information contrary to the Act.

[para 4] Neither party provided submissions or evidence for the inquiry.

II. RECORDS AT ISSUE

[para 5] As this inquiry is in relation to a complaint that personal information has been disclosed, there are no records at issue.

III. ISSUES

Issue A: Did the Organizations collect, use, and / or disclose "personal information" of the Complainant as the term is defined in the Act?

Issue B: If the Complainant's personal information was disclosed, was the disclosure excluded from the Act by virtue of section 4(3)(k)?

Issue C: If disclosure was not excluded from PIPA by virtue of section 4(3)(k), did the Organizations disclose the information contrary to, or in compliance with section 7(1)(d) of the Act? In particular, did the Organization have the authority to disclose the information, without consent, as permitted by section 20(b),(i),(m) or (o) of PIPA?

IV. DISCUSSION OF ISSUES

Issue A: Did the Organizations collect, use, and / or disclose "personal information" of the Complainant as the term is defined in the Act?

[para 6] Having reviewed the Complainant's complaint and her letter of April 22, 2008, I am satisfied that she is not complaining that the Organizations collected or used her personal information contrary to PIPA. Rather, she complains that her personal information was disclosed in the minutes of the condominium owners' Annual General Meeting dated December 5, 2007.

[para 7] In Order P2006-008, the Commissioner explained the burden of proof in relation to complaints made under PIPA in the following way:

Relying on these criteria in Order P2005-001, I stated that a complainant has to have some knowledge of the basis of the complaint and it made sense to me that the initial burden of proof can, in most instances, be said to rest with the complainant. An organization then has the burden to show that it has authority under the Act to collect, use and disclose the personal information. This initial burden is what has been termed the “evidential burden”. As I have said, it will be up to a complainant to adduce some evidence that personal information has been collected, used or disclosed. A complainant must also adduce some evidence about the manner in which the collection, use or disclosure has been or is occurring, in order to raise the issue of whether the collection, use or disclosure is in compliance with the Act.

[para 8] The authors of *The Law of Evidence* 2nd Edition describe the evidential burden in the following way:

A party... may satisfy an evidential burden without doing anything; for example, a witness called by the Crown testifies to facts, which raise the issue of self-defence. Thus, a party may discharge an evidential burden by pointing to some evidence already on the record. In these circumstances, the defendant does not adduce evidence but rather, the issue is raised by the evidence...

The term “evidential burden” means that a party has the responsibility of ensuring that there is sufficient evidence of the existence or non-existence of a fact on the record to pass the threshold test for that particular fact or issue. The party need not adduce the evidence, but may point to it if it is already on the record.

[para 9] At an inquiry into a complaint that personal information has been collected, used, or disclosed, a complainant bears the initial burden of adducing or pointing to evidence that establishes his or her personal information was collected, used or disclosed. In the present case, the Complainant points to the minutes of the December 5, 2007 annual general meeting of Condominium Corporation NO. 7910117, as evidence that her personal information was disclosed. The Complainant did not provide any evidence in relation to the other allegations contained in her letter of April 22, 2008; however, as she did not make reference to these issues in her complaint, I infer that the allegations were made to illustrate a point, rather than to initiate new complaints.

[para 10] The minute at issue is the following, which appears under the heading “Review of Audited Financial Statements”:

[The president of the board] confirmed the special assessments were not in arrears and that the legal fees were related to [the number of the Complainant’s unit].

[para 11] “Personal information” is defined in section 1(k) of PIPA as:

I In this Act,

(k) “personal information” means information about an identifiable individual...

From the meeting minutes one can learn that a reference to legal fees appears in the audited financial statements and that there is a relationship between those fees and the Complainant’s unit. However, one cannot tell from the minute whether the legal fees mentioned in the minute are being charged by the condominium corporation or are owed

by it or what the reasons are. Further, the minutes do not indicate that the legal fees are owed by or are owing to the owner of the unit. Arguably, the information relates to or is connected to the Complainant, given that she is the owner of the unit.

[para 12] In Order P2006-004, the Commissioner considered the meaning of “personal information *about* an identifiable individual” under PIPA and said that information is not personal information if it is only connected to an individual in some way:

The Act defines “personal information” as “information about an identifiable individual”. In my view, “about” in the context of this phrase is a highly significant restrictive modifier. “About an applicant” is a much narrower idea than “related to an Applicant”. Information that is generated or collected in consequence of a complaint or some other action on the part of or associated with an applicant – and that is therefore connected to them in some way – is not necessarily “about” that person.

I find that the information in the minutes is not *about* the Complainant, as it is not sufficiently detailed to enable anyone reviewing the minutes to learn information about the Complainant. Possibly, there are people who received the minutes who have other related information such that knowing that information in addition to the information in the minutes would enable them to know personal information about the Complainant, but if that is so, I have no evidence of it. As a result, I find that the minutes do not contain the personal information of the Complainant. It therefore follows that I find that the minutes do not disclose her personal information.

[para 13] Even if I had found that the information in the minutes was the Complainant’s personal information, i.e., that the minutes disclosed information about the Complainant, i.e. that she owes fees to the condominium corporation or is owed fees by the condominium corporation, or that the corporation was involved in legal proceedings against the Complainant or that she was involved in legal proceedings against the condominium corporation, I would find that the presence of this information in the minutes does not amount to a disclosure.

[para 14] The CPA creates condominium corporations and establishes laws governing condominium corporations and condominium owners. Neither the Organizations nor the Complainant has referred to this legislation in their correspondence; however, the CPA is relevant to determining whether a disclosure took place.

[para 15] Section 25 of the CPA states that a corporation consisting of owners is established once a condominium plan is registered. Further, this provision establishes the right of this corporation to represent all owners in litigation.

25(1) On the registration of a condominium plan, there is constituted a corporation under the name “Condominium Corporation No. ____” and the number to be specified is the number given to the plan on registration.

- (2) *A corporation consists of all those persons*
- (a) *who are owners of units in the parcel to which the condominium plan applies, or*
 - (b) *who are entitled to the parcel when the condominium arrangement is terminated pursuant to section 60 or 61.*
- (3) *Without limiting the powers of the corporation under this or any other Act, a corporation may*
- (a) *sue for and in respect of any damage or injury to the common property caused by any person, whether an owner or not, and*
 - (b) *be sued in respect of any matter connected with the parcel for which the owners are jointly liable.*

Section 25 means that all owners of units form a single entity known as a condominium corporation. Essentially the condominium corporation is all the owners of units in the condominium plan acting jointly as one legal person. A condominium corporation has powers and duties under the CPA including the power to sue or be sued on behalf of the owners.

[para 16] Section 28 of the CPA establishes the board of directors of a condominium corporation and establishes that the powers and duties of the condominium corporation are to be exercised and performed by the board.

28(1) A corporation shall have a board of directors that is to be constituted as provided by the bylaws of the corporation.

(7) The powers and duties of a corporation shall, subject to any restriction imposed or direction given in a resolution passed at a general meeting, be exercised and performed by the board of the corporation.

The board of directors is not separate from the corporation, but is elected in order to carry out the powers and duties of the condominium corporation. In effect, it is the directing mind of the condominium corporation.

[para 17] Section 30 of the CPA establishes that the board must convene an annual general meeting of the owners, such as the one recorded in the minutes of December 5, 2007, and that the condominium corporation must prepare financial statements and distribute them to each of the owners.

30(1) The board shall, once every year, convene an annual general meeting of the owners.

(2) An annual general meeting of the owners shall be convened by the board within 15 months of the conclusion of the immediately preceding annual general meeting.

- (3) *Subject to the regulations, the corporation shall,*
- (a) *in accordance with generally accepted accounting principles, prepare financial statements for the corporation's preceding fiscal year and an annual budget for the corporation's fiscal year that immediately follows the corporation's preceding fiscal year, and*
 - (b) *distribute copies of the financial statements and the annual budget to each of the owners.*

Amounts owing by or owed to the condominium corporation, including legal fees, would form part of the financial statements. Further, it would be necessary for the financial statements to contain some means of identifying the source of the debt or credit, and some explanation as to what the debt or credit is for.

[para 18] Section 32 of the CPA establishes that a condominium corporation is regulated by bylaws providing for the management and administration of units, and that all owners are bound by the bylaws.

32(1) The bylaws shall regulate the corporation and provide for the control, management and administration of the units, the real and personal property of the corporation and the common property.

(2) The owners of the units and anyone in possession of a unit are bound by the bylaws.

[para 19] Sections 36 and 37 of CPA establish that the condominium corporation may sanction owners for failing to comply with bylaws and may claim legal expenses, such as legal fees, from a defendant if the corporation has taken legal action in order to enforce sanctions.

[para 20] Section 44(i) requires a condominium corporation to keep minutes of meetings and to provide them to owners, purchasers and mortgagees on request. It states:

44 On the written request of an owner, purchaser or mortgagee of a unit the corporation shall, within 10 days after receiving that request, provide to the person making the request one or more of the following as requested by that person:

- (i) a copy of any minutes of proceedings of a general meeting of the corporation or of the board;*

[para 21] Based on my review of the CPA, I find that even had there been more detailed information about the legal fees contained in the minutes, such as whether they were owed or owing, there would be no disclosure for the purposes of PIPA. Condominium Corporation 7910117 consists of the unit owners, who are the attendees at the annual general meeting. The minutes were taken in order to record the actions and decisions of the condominium corporation at the annual general meeting. The actions of

the condominium corporation in relation to the legal fees, and in explaining what the legal fees related to, are the actions of all the condominium owners acting collectively in accordance with their duties under the Act. As a result, recording what the legal fees related to in the minutes, or providing more detailed information about them, does not have the effect of disclosing information, as the condominium corporation and the owners of the units are the same legal entity. In other words, the condominium corporation was only recording the actions it had taken.

[para 22] In making this finding, I do not mean that condominium corporation minutes are not subject to PIPA. However, so long as a condominium corporation is carrying out its duties or powers under the CPA and does not include personal information in the minutes extraneous or irrelevant to carrying out those duties and powers, then it will generally not be disclosing personal information in its minutes, but recording the action it has taken or decided to take under the CPA or its own bylaws. As a hypothetical example, it would not be a disclosure of personal information to include in the financial statements or minutes that the condominium corporation is taking action in relation to a particular unit for breach of the bylaws or to record such a statement in the minutes, but it may be a disclosure to include personal opinions about a unit owner, or the unit owner's financial or personal circumstances, if recording that information is not done for the purpose of carrying out the business of the condominium corporation as required by the CPA.

[para 23] Section 44 of the CPA contemplates disclosure of information in the minutes in the event that a mortgagee or purchaser requests the minutes. If disclosure is made in those circumstances, this disclosure would be authorized by statute within the terms of section 20(d) of PIPA so long as the personal information in the minutes is relevant to the condominium corporation's duties or powers under the CPA.

[para 24] It is unclear on what basis the Complainant complains that the minute of the annual general meeting was a collection, use, or disclosure by Longley Condominium Services Ltd. However, Longley Condominium Services Ltd. is the agent of the corporation and acts with the delegated authority of the condominium corporation to manage the property. Consequently, informing Longley, in this instance of the legal fees, would not be a disclosure, as Longley acts as the condominium corporation in relation to management of the corporation.

[para 25] For the reasons above, I find that the Complainant has not established that the Organizations disclosed her personal information.

Issue B: If the Complainant's personal information was disclosed, was the disclosure excluded from the Act by virtue of section 4(3)(k)?

[para 26] As I have found that there was no disclosure of personal information, I need not answer this question. However, given that the Organizations are apparently of the view that information relating to or discussing a legal action is information subject to

section 4(3)(k) I have decided to clarify what kinds of personal information are subject to section 4(3)(k) . Section 4(3)(k) states:

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

(k) personal information contained in a court file, a record of a judge of the Court of Appeal of Alberta, the Court of Queen's Bench of Alberta or The Provincial Court of Alberta, a record of a master in chambers of the Court of Queen's Bench of Alberta, a record of a sitting justice of the peace or a presiding justice of the peace under the Justice of the Peace Act, a judicial administration record or a record relating to support services provided to the judges of any of the courts referred to in this clause;

[para 27] In Order F2007-021, the Adjudicator discussed what it means to be a record "in a court file" for the purposes of section 4(1)(a) of the *Freedom of Information and Protection of Privacy Act*. He said:

To reconcile my conclusion with Orders F2004-030 and F2007-007, I distinguish copies of the filed versions of records, which I believe fall under section 4(1)(a), from copies of the same records that are not copies of the filed versions, which do not fall under section 4(1)(a). Examples of the latter are drafts of documents (even if the content is the same as the document that was filed) and records that are not attached as exhibits to an affidavit that has been filed (even if it is the same record as the filed exhibit). What makes information fall under section 4(1)(a) is the fact that it is a copy of the *filed* record, rather than a copy of the *unfiled* record. When the previous Orders of this Office state that records "that a public body filed in court" and "duplicates [that] may also exist in the court file" remain within the scope of the Act, I accordingly restrict this to mean an unfiled copy or version of a record filed in court.

One of the reasons for excluding information under section 4(1)(a) has been suggested to be that an ongoing alternate system for access is available (*Alberta (Attorney General) v. Krushell* at para. 48). This alternate system for access (i.e., by requesting to view files at the courthouse) is available for copies of filed versions of records, but is not available for unfiled versions of records, even if the content is the same. In other words, I know in this inquiry that the Notice of Appeal and two Memoranda in the Crown prosecutor's file are available at the courthouse because they are stamped "filed". If they were not so stamped, I would not be certain that the versions are the same as the information in the court file.

I conclude that a copy of a filed version of a court record is "information in a court file". Besides the records to which the Public Body specifically applied section 4(1)(a), I note copies of other filed versions of court records in the Crown prosecutor's file. While the Public Body did not apply section 4(1)(a) to those records, I must apply the section myself, as it addresses whether or not I have jurisdiction over the records (Order F2002-024 at para. 11).

[para 28] I agree with this analysis, and find that it applies equally to section 4(3)(k) of PIPA, where the personal information must be "information *contained* in a court file". The Organization has provided no evidence that the information in the minutes is information contained in a court file or is the record of a judge listed in section 4(3)(k). In addition, there is no evidence to suggest that the information in the minute is part of a record or a copy of a record that has been filed with the court. Instead, the minute is clearly a minute created for the sole purpose of recording what took place at the annual general meeting.

Issue C: If disclosure was not excluded from PIPA by virtue of section 4(3)(k), did the Organizations disclose the information contrary to, or in compliance with section 7(1)(d) of the Act? In particular, did the Organization have the authority to disclose the information, without consent, as permitted by section 20(b),(i),(m) or (o) of PIPA?

[para 29] As I have found that there was no disclosure, I need not answer this question.

V. ORDER

[para 30] I make this Order under section 52 of the Act.

[para 31] I confirm that the Organizations performed their duties to the Complainant under PIPA.

Teresa Cunningham
Adjudicator