

You Raise the Issue

SANDRA ANDERSON



Sandra Anderson

Question: *I recently bought a retail business in Alberta with several dozen employees who are covered for health and disability benefits with a private insurer. I pay 100% of premiums and manage the benefits. Now one employee wants copies of my contract with the benefits insurer and all correspondence between the insurer and the previous owner and now me who administer the benefits. I've never shared that type of information with my employees before. Do I have to give it to her?*

Not necessarily. Your business is subject to the *Personal Information Protection Act* (PIPA) which governs the privacy and disclosure of personal information which is in the control or custody of a private organization such as yours. You as the owner are subject to PIPA personally when you are acting in your "commercial" capacity rather than as an individual. However, PIPA does not change the rules for records and information other than that which is *personal information* or, in this case, personal employee information. Only personal information and personal employee information are subject to PIPA.

Since January 1, 2004, you have been under the obligation to have a privacy policy and to designate a person to ensure that the business complies with PIPA. The first question you should ask yourself, then, is whether your privacy policy permits disclosure of the insurance policy, despite your past practice. You should also ask the employee to specify in writing what she is requesting, as PIPA requires.

Next, you should review the records which are responsive to the applicant's request. Starting with the insurance policy, does it contain the names of individuals? If the previous owner is named, for example, as a signatory to the insurance policy, he signed in his "official" capacity, and his name is not his "personal information". You may disclose the insurance policy to the applicant if you wish. However, if there are portions of the insurance policy or an appendix to it which contains the names, addresses, telephone numbers, medical information, or other personal information of your employees, you *must* not disclose that information to the employee (unless it is her own personal information) and must redact it out of the document if you choose to disclose the remainder of the insurance policy.

As for the correspondence, you must examine to see if it contains information which might, or does, identify the applicant. If so, it is her personal information and she is entitled to access it, along with an explanation of the purpose for which it has been and is being used by the organization. On the other hand, it likely contains identifiable information about your other employees, or at least some of them. In that case, you are prohibited by section 24(3) of PIPA from disclosing it to the applicant. If a piece of correspondence contains personal information about the applicant which is linked with personal information about other individuals, you must determine if you can reasonably sever the two. If so, you are required to give the applicant her own personal information while

2000, 10235 - 101 STREET
EDMONTON, AB T5J 3G1
PH: 780.423.3003

400 THE LOUGHEED BUILDING
604 1 STREET SW
CALGARY, AB T2P 1M7
PH: 403.260.8500

201, 5120 - 49TH STREET
YELLOWKNIFE, NT X1A 1P8
PH: 867.920.4542

www.fieldlaw.com

redacting out the personal information of other individuals.

Question: *I work in an HR department, and one of our employees wants a copy of a file which contains correspondence all of which he initially provided to me in the first place several months ago. He has since lost it. He has made a written request for this file. Can I give him a copy of it?*

If the disclosure of the file's contents would reveal personal information about another individual, the answer is no. Unlike FOIPPA, PIPA contains no list of discretionary factors, such as whether the record originated with the applicant, to consider when responding to access requests. To the extent that you can reasonably sever the information about other identifiable individuals from the personal information of the applicant, you should do so and provide the applicant only with his personal information and withhold the rest.

DISCLAIMER this article should not be interpreted as providing legal advice. Consult your legal adviser before acting on any of the information contained in it. Questions, comments, suggestions and address updates are most appreciated and should be directed to:

The Labour and Employment Group
Edmonton 780-423-3003
Calgary 403-260-8500

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