

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER P2021-06

July 9, 2021

ATB FINANCIAL

Case File Number 007947

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Summary: The Complainant applied for a loan from ATB Financial (the Organization). In the course of the loan application, a (now) former representative of the Organization (the Former Representative) collected personal information about the Complainant's financial circumstances (personal financial information), including information about his disability income. The Former Representative also collected personal information about the Complainant's family and medical situation (personal family and medical information). The Former Representative informed the Complainant that using his personal family and medical information "was the only way" to obtain the loan. Subsequently, the loan was approved in light of the Complainant's personal financial information only. Under the *Personal Information Protection Act* (PIPA), the Complainant complained about the collection, use, and disclosure of his personal information in the loan application process.

The Adjudicator found that the evidence did not indicate any disclosure of the Complainant's personal information.

The Adjudicator found that the Organization collected and used the Complainant's personal family and medical information in contravention of PIPA. The Adjudicator found that the Organization properly collected and used the Complainant's personal financial information.

The Adjudicator ordered the Organization to cease collecting and using personal information in contravention of PIPA. Specifically, the Organization was ordered to

collect only personal information that is reasonably necessary to the loan application process.

Statutes Cited: AB: *ATB Financial Act*, RSA 2000, c A-45.2 s. 2(1); *Freedom of Information Act*, R.S.A. 2000 c. F-25, s. 1(n); *Personal Information Protection Act* S.A. 2003, c. P-6.5 ss. 1(k); 2; 7(1); 7(2); 8(1), 8(2), 8(3); 11(1), 11(2); 16(1), 16(2); 19(1), 19(2); 52. *Personal Information Protection Act Regulation*, AR 366/2003 ss. 2(1), 2(2)

Authorities Cited: AB: Orders P2010-002, P2021-15

I. BACKGROUND

[para 1] The Complainant is a client of ATB Financial (the Organization). On August 24, 2017, he and his wife applied for a loan from the Organization. The loan was to make a final payment on a long-term real property lease. Throughout the loan application process, the Complainant dealt with a (now) former representative from the Organization (the Former Representative).

[para 2] Upon the application for the loan, the Organization created an “Account Origination” (AO) for the Complainant. The AO presents as a sort of ledger that details the loan application process, and consists largely of the Former Representative’s consideration of the Complainant’s financial and personal situation.

[para 3] The Organization explains that it collected certain information from the Complainant that is reasonably required to apply for a loan, such as,

name, date of birth, physical address, email and other contact information, ID information (as part of Know Your Customer “KYC” requirements), employment and income information, and information required to be collected under the *Foreign Account Tax Compliance Act* (FATCA) and Common Reporting Standard (CRS).

[para 4] The Organization also collected further information about the Complainant’s financial situation, including his tax returns for the previous two years, most recent pay stubs, a list of assets, and ran a credit check on the Complainant.

[para 5] With the exception of the Complainant’s concern that his name may have been disclosed, the Complainant does not take issue with collection, use, or disclosure, of the above information. Rather, the Complainant is concerned with information collected by the Organization surrounding his disability income, ability to work, and medical condition. The details are below.

[para 6] On August 30, 2017, the Former Representative telephoned the Complainant’s wife and asked her several questions about the Complainant’s health and ability to work, including the following:

- What medical conditions does the Complainant suffer from?
- Why is the Complainant unable to work?

- Are there plans for the Complainant to return to work?

[para 7] The Complainant's wife responded to the questions with "high level" information, but did not go into details about the Complainant's health or reasons why he was unable to work. She clarified that the Complainant collected long-term disability income and not short-term disability income and confirmed that there were no plans for the Complainant to return to work at the time.

[para 8] The fact that the Complainant was collecting disability income made the loan application process more complicated than it otherwise would have been. The Organization's loan application process documents specify, "All applications using non-permanent disability income are considered an extreme exception and must be submitted to Retail Credit." "Non-permanent disability income" includes long-term disability income.

[para 9] As of August 30, 2017, time was becoming an issue for the Complainant. The Complainant's notes from August 30 state that the owner of the real property (the Owner) was holding the property for the Complainant for 10 days, pending final payment.¹

[para 10] On September 2, 2017, the Former Representative informed the Complainant and his wife that the loan was denied because of the Complainant's disability. Notes from the AO indicate that the particular issue was that the manner in which the Complainant's disability income was calculated resulted in a determination that his Total Debt Service Ratio did not meet the Organization's threshold for granting the loan. The Complainant informed the Former Representative that the amount he needed to borrow was now lower than initially requested. The parties agreed to meet in the future to discuss the loan further.

[para 11] The Complainant, his wife, and the Former Representative met in person on September 18, 2017. At this meeting, the Former Representative informed the Complainant that "credit department" (Retail Credit Team) needed more information about his medical issues and why he was unable to work. The Former Representative explained to the Complainant that his debt-to-income ratio still did not meet the threshold at which the loan could be approved. Normally this was a condition that the Former Representative could waive; however due to the fact that the Complainant was collecting disability income, the Retail Credit Team needed to review the application.

[para 12] In the words of the Complainant, at the September 18, 2017 meeting, the Former Representative also asked him, "Why can't you work? You look fine." The Representative stated that the Complainant should "go for the pity vote" to get the loan and that the more information he provided, the more options there would be for the loan. After reviewing the Former Representative's use of the information it appears that he was suggesting that the loan might be approved for compassionate reasons. The Complainant provided the following documentation:

¹ The Complainant does not state the date on which the 10 day hold began, but makes clear that it was in effect as of August 30, 2017.

- Documentation confirming employment
- Documentation confirming that his disability income continues past the change of definition date
- Documentation confirming the duration of his disability income

[para 13] The Complainant describes that the Former Representative also asked a series of questions regarding specific details of his medical condition. As a result, the Complainant provided “very personal medical and psychological information” to the Former Representative. At my request, in his submissions, the Complainant described the information that he provided to the Former Representative. It is medical, treatment, and family information which the Complainant provided reluctantly, given its extraordinarily sensitive nature.

[para 14] The Organization states that it was not aware of the particulars of the information that the Complainant states he provided during the September 18, 2017 meetings until this Inquiry. It notes that it is not in position to address the Complainant’s assertions of what he was asked by, and what he told, the Former Representative, since the Former Representative is no longer employed by the Organization. Since I have no reason to doubt the Complainant’s credibility, I find that the evidence establishes, on the balance of probabilities, that he provided information to the Former Representative as he describes.

[para 15] Some, but not all, of the information gathered by the Representative was entered into the Complainant’s AO. Personal information about the Complainant entered into the AO consists of the following:

- Descriptions of physical and emotional state
- Details of health history
- Details of related family dynamics
- Identification of the Complainant’s medical condition
- Descriptions of how acquiring the property will benefit the Complainant and his family
- The Complainant’s place of employment and job title
- The fact that the Complainant collected long term disability income

[para 16] The Organization states that the Former Representative entered the Complainant’s information into the AO in order to advocate for the loan. Notes from the AO following the September 18, 2017 meeting confirm that the Former Representative adopted the role of advocate, and mentioned the Complainant’s personal and family circumstances in a bid to obtain an exception, and have the loan granted.

[para 17] On September 21, 2017, the Owner contacted the Complainant since the 10-day hold on the lot lease had been exceeded.

[para 18] On September 28, 2017, the Former Representative informed the Complainant that the loan was denied. The Complainant did not meet the Organization's debt-to-income-ratio requirement, a situation which required an exception from the Retail Credit Team. However, since the loan was already subject to an exception for disability income, another exception could not be made. The Former Representative sent the Complainant a text message with the Organization's customer service telephone number to call about the loan. The Former Representative urged the Complainant to "fight for what's right" and advised the Complainant to "use emotion, anger, and frustration" since when customers become angry, loans are usually approved.

[para 19] The Complainant called that day, and the Organization took his concerns about the loan process as a customer complaint. The Complainant was advised to contact the Organization's Branch Manager before escalating his complaint to the Service Excellence Team.

[para 20] On September 29, 2017, the Complainant met with the Former Representative and the Branch Manager. The Branch Manager reviewed the documents regarding the duration of the Complainant's disability income and concluded that it should satisfy the credit department, and that the loan should be approved.

[para 21] Unbeknownst to the Complainant at the time, the Former Representative met with the Owner on October 4, 2017. The details of the conversation are unknown. The Complainant is concerned that Former Representative might have passed on his personal information, including medical information, to the Owner.

[para 22] On October 6, 2017, the Former Representative contacted the Complainant and informed him that the loan would be denied. According to the Former Representative, the Owner needed an answer on the final payment "now" and had another buyer lined up if it was not made. The rationale for denying the loan at this point was that the Organization did not have sufficient time to complete the loan application.

[para 23] Subsequently, the Complainant contacted the Owner about why he was pressuring the Former Representative (by demanding final payment "now"). The Owner informed the Complainant that the deadline for final payment was October 18, 2017, and that there was no other buyer lined up, but the property was desirable and the number of lots available was diminishing.

[para 24] The Complainant and his wife then escalated their complaint to the Service Excellence Team.

[para 25] On October 10, 2017, the Organization approved the loan.

[para 26] After the loan was approved, the Complainant remained concerned about the loan process. In October, 2017, the Organization's Privacy Team became involved in the customer service complaint, regarding information collected from the Complainant in the course of the loan application process.

[para 27] On December 6, 2017, a member of the Organization's Privacy Team contacted the Complainant by telephone. The Organization states that during this call, the Complainant explained that he had provided the very personal medical and psychological information requested by the Former Representative, but did not describe the particulars of the information.

[para 28] In the course of the investigation into the loan application process, the Organization's Market Vice President (MVP) spoke to the Former Representative and inquired whether he had provided any medical information about the Complainant to the Owner. According to the MVP, the Former Representative indicated that he did not recall providing any such information.

[para 29] The MVP also contacted the Owner, who informed him that he had learned of the Complainant's disability from the Complainant's wife - a fact that the MVP states the Complainant's wife later confirmed in a telephone call. Despite this version of events, in their submission, the Complainant and his wife deny that the Complainant's wife informed the Owner about the Complainant's medical condition.

[para 30] On January 2, 2018², the Organization's Director of Customer Relations sent the Complainant a letter explaining his presumptions and understanding about how the Complainant's finances affected the loan process, but the letter did not satisfy the Complainant's desire to know exactly what had transpired. The Organization's Privacy Team followed up with an e-mail to the Complainant on January 26, 2018. In the e-mail, it confirmed that,

...there is no requirement on ATB's end to collect any medical information as part of the loan application and [outlined that] medical information captured in support of the application was to assist with obtaining an exception and approval of the loan from ATB's Retail Credit team.

[para 31] For unknown reasons, the Complainant appears not to have received the January 26, 2018 e-mail at the time when it was sent. He states that he never heard from the Organization's Privacy Team.

[para 32] The Complainant then addressed his concerns to various Government and regulatory bodies, including the Office of the Information and Privacy Commissioner, in the form of a complaint about the loan process, dated March 8, 2018.

[para 33] Investigation and mediation were authorized to resolve the Complainant's concerns, but did not do so, and the matter proceeded to inquiry. Despite that the Organization took steps to destroy the Complainant's personal information that it determined had not been required in order to assess his eligibility for the loan, the

² The letter is dated January 2, 2017. The Organization explains that "2017" is a typo that should read "2018."

Complainant remains concerned about how it collected, used, and disclosed his personal information.

[para 34] I note that while the Complainant is concerned about how the Organization handled his customer service complaint in the course of the loan application process, his complaint to this Office does not raise concerns about the Organization's investigation into what transpired in the loan application process. Accordingly, I do not consider the investigation into the loan application process in this order.

II. ISSUES

[para 35] The issues in this inquiry are as follows:

ISSUE A: Did the Organization collect, use and/or disclose "personal information" of the Complainant as that term is defined in PIPA?

ISSUE B: Did the Organization collect, use and/or disclose the information contrary to, or in compliance with, section 7(1) of PIPA (no collection, use or disclosure without either authorization or consent)? In particular,

- a. **Did the Organization have the authority to collect, use and/or disclose the information without consent, as permitted by sections 14, 17 or 20 of PIPA?**
- b. **If the Organization did not have the authority to collect, use and/or disclose the information without consent, did the Organization obtain the Complainant's consent in accordance with section 8 of the Act before collecting, using or disclosing the information? In particular,**
 - i. **Did the individual consent in writing or orally? Or**
 - ii. **Is the individual deemed to have consented by virtue of the conditions in section 8(2)(a) and (b) having been met? Or**
 - iii. **Is the collection, use or disclosure permitted by virtue of the conditions in section 8(3)(a), (b) and (c) having been met?**

ISSUE C: Did the Organization collect, use or disclose the information contrary to, or in accordance with, sections 11(1), 16(1) and 19(1) of PIPA (collection, use and/or disclosure for purposes that are reasonable)?

ISSUE D: Did the Organization collect, use or disclose the information contrary to, or in accordance with, sections 11(2), 16(2) and 19(2) of PIPA (collection, use and/or disclosure to the extent reasonable for meeting the purposes)?

III. DISCUSSION OF ISSUES

Preliminary Matter – Alberta Treasury Branches continued as ATB Financial

[para 36] Sections 2(1) and (2) of the *Personal Information Protection Act Regulation*, AR 366/2003 state that PIPA applies to Alberta Treasury Branches, with the caveat that records that are subject to the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000 c. F-25 (FOIP) remain subject to that act:

2(1) The Act applies to Alberta Treasury Branches and its subsidiaries and to any personal information that is in the custody of or under the control of Alberta Treasury Branches or any of its subsidiaries.

(2) Notwithstanding subsection (1), any records of Alberta Treasury Branches and of any of its subsidiaries that are subject to the Freedom of Information and Protection of Privacy Act remain subject to that Act.

[para 37] As stated in section 2(1) of the *ATB Financial Act*, RSA 2000, c A-45.2, ATB Financial is the same corporation as Alberta Treasury Branches, continued under a new name.

2(1) The corporation known as Alberta Treasury Branches is continued as a corporation under the name ATB Financial.

[para 38] As ATB Financial is the same corporate entity as Alberta Treasury Branches, PIPA continues to apply to it, despite the name change.

Preliminary Matter – Possible application of Section 7(2)

[para 39] The statement from the Former Representative that providing the Complainant's "very personal information" was "the only way to get the loan", and the Complainant's reluctant provision of such information raise the possibility of the application of section 7(2) of PIPA. Section 7(2) states,

(2) An organization shall not, as a condition of supplying a product or service, require an individual to consent to the collection, use or disclosure of personal information about an individual beyond what is necessary to provide the product or service.

[para 40] In this case, providing "very personal information" does not appear to be a condition of obtaining the loan in the sense contemplated by section 7(2). Upon review of the Organization's loan procedures, a loan applicant must establish that they meet the financial standards for obtaining a loan, set by the Organization. To do so, an applicant must provide financial and employment information, including information verifying disability income, confirming their financial eligibility. Providing financial and employment information is a condition of applying for a loan, but not the sort of "very personal medical and psychological information" provided by the Complainant.

[para 41] In contrast, there is nothing in the Organization’s loan procedures that requires or refers to the type of very personal information provided by the Applicant to the Former Representative. Neither did the Former Representative impose upon the Complainant a condition that he provide such information; there was no *quid pro quo* where if the Complainant consented to collection of the information then would the loan be granted. Rather, the Former Representative’s notes in the Complainant’s AO, his advocative stance, and his urging the Complainant to “fight for what’s right” indicate that when he told the Complainant “this is the only way to get the loan” he was describing a means of trying to obtain the loan on a compassionate basis despite the Organization’s financial requirements. I do not believe the Former Representative led the Complainant to believe that the information was *required* in order to apply for a loan; rather the Complainant was made to understand it improved his chances of obtaining the loan. As such, I find neither that it was a “condition” as that term is used in section 7(2), nor that the Complainant was “required” to provide it.

[para 42] Therefore, whether or not the actions of the Organization’s Former representative complied with PIPA is best determined under sections 7(1) and 8.

Preliminary Matter – Standard of Reasonableness

[para 43] PIPA describes a standard of what is reasonable in section 2,

2 Where in this Act anything or any matter

(a) is described, characterized or referred to as reasonable or unreasonable, or

(b) is required or directed to be carried out or otherwise dealt with reasonably or in a reasonable manner,

the standard to be applied under this Act in determining whether the thing or matter is reasonable or unreasonable, or has been carried out or otherwise dealt with reasonably or in a reasonable manner, is what a reasonable person would consider appropriate in the circumstances.

[para 44] I have applied this standard where required throughout this Order.

Preliminary Matter – Organization acknowledges that Collection was Unreasonable

[para 45] In its submissions, the Organization acknowledges that collecting the Complainant’s medical information (personal family and medical information)³ was not required in order to apply for the loan. Without further elaborating, it says that doing so was contrary to the Organization’s policies and was not reasonable for the purposes of assessing the Complainant’s eligibility for the loan. I note that, here, I understand the Organization to be stating that not only was collecting this? information unreasonable for assessing whether the Complainant met the formal, financial requirements of the loan, but

³ Referred to as “personal family and medical information” as described at paragraph 50 of this Order.

also for making a compassionate case to have the loan approved. The Organization's policies do not mention or contemplate changing loan requirements for compassionate reasons in light of any medical information, and; the Organization is clearly aware that the Former Representative was advocating for the Complainant, and entered his personal family and medical information into the AO to do so.

[para 46] I agree with the Organization that the collection was unreasonable under these circumstances. The Complainant's personal family and medical information does not inform the Organization about whether the Complainant met the formal, financial requirements, as such, collecting it was unreasonable for assessing whether he met those requirements. The extraordinarily sensitive nature of the Complainant's personal family and medical information is such that collecting it was unreasonable for making a compassionate case to have the loan approved, even if the Organization was willing to deviate from its formal, financial policies. While it is conceivable that in other circumstances, involving less sensitive personal information, it may be reasonable to collect personal information in order to make a compassionate case for a loan (or other service), the personal family and medical information in this case does not leave room for such consideration here. The line of questioning by the Former Representative during the September 18, 2017 meeting can fairly be said to be beyond the pale.

ISSUE A: Did the Organization collect, use and/or disclose "personal information" of the Complainant as that term is defined in PIPA?

[para 47] "Personal Information" is defined in section 1(k) of PIPA:

(k) "personal information" means information about an identifiable individual;

[para 48] Unlike the definition of "personal information" in section 1(n) of FOIP, PIPA does not stipulate that personal information must be recorded. Accordingly, information that the Former Representative collected from the Complainant in conversation, but did not enter into the Complainant's AO, may be personal information under PIPA.

[para 49] The information about which the Complainant is concerned is personal information under this definition. His name is personal information, as is information about his disability income, duration of it, medical conditions, treatment, and personal history; they are all about him, as an identifiable individual.

[para 50] For ease of reference, I use the term "personal family and medical information" to refer to the following information:

- Descriptions of physical and emotional state
- Details of health history
- Details of related family dynamics
- Identification of the Complainant's medical condition

- Descriptions of how acquiring the property will benefit the Complainant and his family⁴

[para 51] I use the term “personal financial information” to refer to the following information:

- The Complainant’s place of employment and job title
- The fact that the Complainant collected long term disability income
- The duration of the Complainant’s disability income
- Whether there were plans for the Complainant to return to work

[para 52] The Organization collected, used, and disclosed the Complainant’s personal information as described below.

Collection

[para 53] The Organization collected the Complainant’s personal information as part of the loan application process. Collection includes information provided to the Former Representative that was not entered into the Complainant’s AO. Even if the information was not retained in a permanent database, it was still collected by the Former Representative as the Organization’s employee.

Whether there was Use and/or Disclosure within the Organization

[para 54] The Complainant notes that his personal information was passed among employees of the Organization. As discussed in Order P2010-002, employees who share information within an organization can be disclosing information for the purposes of PIPA, but may also be using information, depending on the context. The Adjudicator in Order P2010-002 stated at paras. 9 and 10,

In my view, an organization’s internal transfer of information is a “use” where the information is transferred within the organization to another person or sector for the same purpose for which it is collected. In coming to this conclusion, I took into account that information within an organization is generally not collected by an individual, but rather by or, on behalf of, a part of an organization that requires the information.

Conversely, I find that the transfer of information is a “disclosure” when the information is transferred outside an organization or when it is transferred within the organization to another person or sector for a purpose different from the one for which it was originally collected. This is particularly true in situations where the internal transfer of information within an organization is not for any institutional purpose.

[para 55] The same point was recently made in Order P2021-15 at para. 15:

⁴ To aid the Organization in understanding precisely what information is referred to here: “Personal family and medical information” includes the highlighted material from the Complainant’s AO (included with the Organization’s initial submission), and the information the Complainant describes providing to the Former Representative during the September 18, 2017 meeting, in his initial submission.

The issue refers to use or disclosure because providing information within an organization is sometimes a use of that information and sometimes is a disclosure. Where the information is provided to employees who need to know the information to perform their work duties (for example, a human resources employee may need to be given a copy of a disciplinary letter) it looks more like a use of information. If the information is provided outside of the organization or to separate areas within an organization for different purposes, it may be a disclosure.

[para 56] In this case, when personal information was collected by the Former Representative and then stored and reviewed by other employees of the Organization for the purposes of the loan application, it appears to have been a use. Reviewing the information for that purpose is necessary in order for them to perform their duty to consider the loan application.

[para 57] Bearing the above in mind, I now consider use and disclosure of the Complainant's personal information, in turn.

Use

[para 58] The Organization used the Complainant's personal information when the Former Representative created the customer profile, and the AO and entered information into the AO in the course of the loan application process, and advocated for the loan to be granted. The Organization's Retail Credit Team also appears to have used the information when it considered whether the loan could be approved in light of the Complainant's disability income.

Disclosure

[para 59] The Complainant is concerned that the Organization disclosed his personal information, including medical information, when the Organization spoke to the Owner.

[para 60] The Organization's position is that it did not disclose personal information, since the evidence does not indicate that any of the Complainant's personal information was disclosed to the Owner. The evidence the Organization gathered through its own investigation indicated that the Owner learned of such information from the Complainant's wife, and not anyone at the Organization.

[para 61] The Complainant and his wife deny that the Complainant's wife informed the Owner about the Complainant's medical condition. The Complainant's wife describes a conversation with the Owner where she clarified that their intent was to purchase the property, regardless of whether or not the loan was approved, and states that she did not pass on any of the Complainant's medical information.

[para 62] Considering the statements of both parties on the matter of whether the Former Representative disclosed any of the Complainant's medical information to the

Owner, I find that there is insufficient evidence to reach a conclusion, on the balance of probabilities, about how the Owner learned of the Complainant's medical condition.

[para 63] While the Complainant's wife is in position to know whether she passed on any information, neither she, nor the Complainant, were present for the discussion between the Owner and the Former Representative. Similarly, the Organization is not in position to know what the Complainant's wife said to the Owner, and its statement that the Owner told the MVP that he learned of the Complainant's disability from the Complainant's wife is hearsay, and denied by the Complainant's wife. The statement from the Organization that the Former Representative did not recall passing on any of the Complainant's medical information is hearsay as well. Additionally, the Former Representative is said to have stated that he did not recall providing any such information, which leaves open the *possibility* that he in fact did, but does not indicate that such is actually the case. I note that there is also no evidence that any party is being dishonest in their statements. In sum, while I may conclude on the evidence from the Complainant's wife that she did not pass on any of the Complainant's medical information, none of the evidence establish that the Former Representative, or anyone else from the Organization, did. Accordingly, I do not consider disclosure of the Complainant's medical information to the Owner any further.

[para 64] In his submissions, the Complainant states that the Former Representative and the Owner, "... shared enough personal information to identify the name of the loan applicants." The Complainant does not elaborate on or provide particulars about this allegation. There is no evidence before me of what personal information was disclosed or how it would enable anyone to identify his or his wife's name. The evidence does not indicate any disclosure of personal information. Accordingly, I do not consider this allegation further.

[para 65] I recognize that the Complainant is naturally concerned that the Former Representative may have passed on further intimate personal information about him to the Owner. However, the mere fact that the Former Representative had such information does not suggest that this was the case, nor does the speculation that he might have passed on such information provide a reasonable basis for me to inquire into whether or not that was the case.

[para 66] As discussed earlier, passing information among employees involved in the loan application process is a use, and not a disclosure. Accordingly the evidence does not indicate that the Organization disclosed the Complainant's personal information.

ISSUE B: Did the Organization collect, use and/or disclose the information contrary to, or in compliance with, section 7(1) of PIPA (no collection, use or disclosure without either authorization or consent)?

[para 67] Section 7(1) of PIPA states,

7(1) Except where this Act provides otherwise, an organization shall not, with respect to personal information about an individual,

- (a) collect that information unless the individual consents to the collection of that information,*
- (b) collect that information from a source other than the individual unless the individual consents to the collection of that information from the other source,*
- (c) use that information unless the individual consents to the use of that information, or*
- (d) disclose that information unless the individual consents to the disclosure of that information*

[para 68] Issues B(a) through B(b)(i) – (iii) examine whether the Organization complied with section 7(1) by either having the Complainant’s consent for collection, use, and disclosure, or whether PIPA otherwise permits collection, use, and disclosure.

a. Did the Organization have the authority to collect, use and/or disclose the information without consent, as permitted by sections 14, 17 or 20 of PIPA?

[para 69] The Organization states that it did not rely on sections 14, 17 or 20 to collect, use, or disclose the Complainant’s personal information without consent. It notes that the Complainant consented to provide personal information required to apply for the loan, and, as described further on, relies on that consent for collection and use of some personal information.

[para 70] After reviewing sections 14, 17, and 20, I find that none of them apply to the circumstances in this case. Accordingly, I find that the Organization did not have authority to collect, use, or disclose the Complainant’s personal information without consent.

b. If the Organization did not have the authority to collect, use and/or disclose the information without consent, did the Organization obtain the Complainant's consent in accordance with section 8 of the Act before collecting, using or disclosing the information?

[para 71] The relevant portions of section 8 of PIPA are sections 8(1) and 8(2); they state,

8(1) An individual may give his or her consent in writing or orally to the collection, use or disclosure of personal information about the individual.

(2) An individual is deemed to consent to the collection, use or disclosure of personal information about the individual by an organization for a particular purpose if

- (a) the individual, without actually giving a consent referred to in subsection (1), voluntarily provides the information to the organization for that purpose, and*
- (b) it is reasonable that a person would voluntarily provide that information.*

[para 72] Issues B(b)(i) through (iii) examine whether the Complainant consented or is deemed to have consented under the above provisions.

i. Did the individual consent in writing or orally? Or

[para 73] The Complainant states that he consented to collection and use of personal information required for the loan process. However, there is no evidence that he expressly consented orally or in writing. There is no indication that Complainant provided consent with the terms of section 8(1). Whether the Complainant is deemed to have consented is considered in the discussion of section 8(2) below.

ii. Is the individual deemed to have consented by virtue of the conditions in section 8(2)(a) and (b) having been met?

[para 74] Regarding the Complainant's personal financial information, I find that he is deemed to have consented to collection and use of it. The Complainant voluntarily provided the information as required by section 8(2)(a). Given that the information is related to employment and disability income, and hence his ability to repay the loan and the Organization's policies require an assessment of a loan applicant's ability to repay a loan, it is reasonable that he would voluntarily provide such information, as required by section 8(2)(b).

[para 75] Regarding his personal family and medical information, I find that the Complainant cannot be deemed to have consented to collection or use of it. While the Complainant provided the information, apparently reluctantly, it is not reasonable that the Complainant would voluntarily provide the information that he did as required by section 8(2)(b). Here, I reiterate that the personal family and medical information provided by the Complainant was, as I earlier described, "extraordinarily sensitive." It is conceivable that in other circumstances, involving less sensitive personal information, it may be reasonable for an individual to voluntarily provide personal information in order to make a compassionate case for loan (or other service).

iii. Is the collection, use or disclosure permitted by virtue of the conditions in section 8(3)(a), (b) and (c) having been met?

[para 76] The Organization does not argue that it provided sufficient notice to the Complainant to justify collection and use under section 8(3). I do not consider section 8(3) further.

Conclusion on Section 7(1)

[para 77] I find that the Organization complied with section 7(1) regarding the Complainant's personal financial information. The Complainant is deemed to have consented to, collection and use of this information, as permitted by section 7(1)(a).

[para 78] I find that the Organization did not comply with section 7(1) regarding the Complainant's personal family and medical information. The Complainant neither consented to, nor is he deemed to have consented to, collection, use, or disclosure of this information.

ISSUE C: Did the Organization collect, use or disclose the information contrary to, or in accordance with, sections 11(1), 16(1) and 19(1) of PIPA (collection, use and/or disclosure for purposes that are reasonable)?

[para 79] Sections 11(1), 16(1), 19(1) of PIPA state,

11(1) An organization may collect personal information only for purposes that are reasonable.

16(1) An organization may use personal information only for purposes that are reasonable.

19(1) An organization may disclose personal information only for purposes that are reasonable.

[para 80] Regarding collection, use and disclosure of the Complainant's personal financial information, I find that the Organization collected and used it for a reasonable purpose. The information was collected and used in order to process the loan application.

[para 81] Regarding collection and use of the Complainant's personal family and medical information, I also find that the Organization complied with section 11(1).

[para 82] While, the Organization acknowledges that collection of medical information was not required in order to apply for the loan, the purpose for which the Former Representative collected and used the Complainant's personal family and medical information was in order to assist him in obtaining the loan. This is a reasonable purpose to collect and use personal information.

[para 83] Since there are no issues about disclosure, I do not need to consider section 19(1).

ISSUE D: Did the Organization collect, use or disclose the information contrary to, or in accordance with, sections 11(2), 16(2) and 19(2) of PIPA (collection, use and/or disclosure to the extent reasonable for meeting the purposes)?

[para 84] Sections 11(2), 16(2), and 19(2) state,

11(2) Where an organization collects personal information, it may do so only to the extent that is reasonable for meeting the purposes for which the information is collected.

16(2) Where an organization uses personal information, it may do so only to the extent that is reasonable for meeting the purposes for which the information is used.

19 (2) Where an organization discloses personal information, it may do so only to the extent that is reasonable for meeting the purposes for which the information is disclosed.

[para 85] Regarding collection and use of the Complainant's personal family and medical information, I find that the Organization collected personal information beyond a reasonable extent, contrary to sections 11(2) and 16(2). The Organization acknowledges that collecting such information was not necessary or reasonable for the purposes of assessing the loan application, and was contrary to its policies. Since the Organization collected information beyond a reasonable extent, it follows that it used that information beyond a reasonable extent as well. Again, I reiterate that the personal family and medical information provided by the Complainant was "extraordinarily sensitive." It is conceivable that in other circumstances, involving less sensitive personal information, collecting personal information in order to make a compassionate case for loan (or other service) may not be collection beyond a reasonable extent.

[para 86] Regarding the Complainant's personal financial information, I find that the Organization complied with sections 11(2) and 16(2). The Organization collected and used this information in order to process the loan application.

[para 87] Since the evidence does not indicate any disclosure of the Complainant's personal information, I do not need to consider section 19(2).

IV. ORDER

[para 88] I make this Order under section 52 of PIPA.

[para 89] I order the Organization to cease collecting and using personal information in contravention of PIPA. Specifically, it should only collect information that is reasonably necessary to its loan application processes.

[para 90] The Organization has already deleted the Complainant's personal family and medical information from its systems. I order it to destroy the Complainant's personal family and medical information retained by it in any other location, if any.

[para 91] I order the Organization to confirm in writing, to me and to the Complainant, that it has complied with this order within 50 days of receiving it.

John Gabriele
Adjudicator
/as