

PIPA CASE SUMMARY P2007-CS-003***Physical Therapy clinic discloses too much personal information in reference*****Summary**

The Complainant alleged that an employee of Junction Point Physical Therapy (“Junction Point”) disclosed the following personal information about the Complainant, without consent, to a caller who was requesting a reference:

- 1) that the Complainant “did a lot of complaining about [her] co-workers,” and
- 2) that “because of [the Complainant’s] cancer [she] couldn’t handle the work”

Jurisdiction

The *Personal Information Protection Act* (“PIPA”) applies to provincially-regulated private sector organizations operating in Alberta, including Junction Point. The Commissioner has jurisdiction in this case because Junction Point is an “organization”, as defined in section 1(i) of the Act. Section 36 of the Act empowers the Commissioner to conduct investigations to ensure compliance with any provision of PIPA and make recommendations to organizations regarding their obligations.

Analysis & Findings

The investigator found that information that the Complainant “complained about her co-workers” qualified as “personal employee information” as defined in section 1(j) of PIPA. The information was collected by Junction Point at the time the Complainant was employed there. The collection was reasonably required and solely related to managing Junction Point’s employment relationship with the Complainant. Managing and/or administering personnel includes such activities as mediating disputes between coworkers, and generally overseeing interactions and relationships between staff members where they impact the employment relationship. The Complainant’s complaints about co-workers were documented in Junction Point’s records. Pursuant to section 21(1)(a) of PIPA, Junction Point was authorized to disclose this information without consent as part of providing a reference.

The information disclosed about the Complainant’s medical diagnosis, however, did not qualify as personal employee information under PIPA as it was not reasonably required for, nor solely related to, managing the employment relationship. While some limited information about an employee’s medical condition may be reasonably required by an employer in order to accommodate an employee in the workplace, the medical diagnosis itself is, in almost all cases, not required.

Nonetheless, the Complainant’s medical diagnosis is “personal information” as defined in PIPA. As such, Junction Point contravened section 7(1)(d) by disclosing this information to the caller without the Complainant’s consent. Further, Junction Point contravened section 19(2) of PIPA by disclosing more information than was reasonable for the purpose of providing an employment reference.

Recommendation

The Investigator reviewed Junction Point’s *Guidelines for Giving Employment References* and found it to be very comprehensive and an excellent guideline for staff. In particular, the policy:

- prohibits staff from providing references unless first brought to the attention of the owner or operations manager and there is pre-approved consent to provide the reference
- requires that references include only “factual, honest, documented and job-related information”
- requires staff to document details of the reference call

In this case, a staff member did not comply with Junction Point’s policy document. However, following the incident in question, Junction Point re-distributed this policy document and reminded staff of their responsibilities. Junction Point reported “Non consensual references are not encouraged and all attempts will be made in the future to maintain compliance to our guidelines.”