

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER P2005-003

October 10, 2006

HENRY REMPEL and MARY ANNE REMPEL

Case File Number P0092

Office URL: <http://www.oipc.ab.ca>

Summary: The Complainant initiated a complaint with the Office of the Information and Privacy Commissioner under section 46(2) of the *Personal Information Protection Act* (the “Act”). The complaint concerned the improper disclosure of personal information about his medical condition by an employee of Henry Rempel and Mary Anne Rempel (the “Organization”). The Complainant, a tenant in a building owned by the Organization, alleged that after he shared personal information concerning his medical condition with the employee of the Organization, the employee unlawfully disclosed his personal information to emergency response personnel contrary to section 7 of the Act (consent for the collection, use and disclosure of personal information).

The Commissioner found that the Organization disclosed the personal information of the Complainant in the interests of the Complainant under section 20(a) of the Act and that the Complainant would not reasonably have been expected to withhold his consent in these circumstances. The Commissioner also found that the disclosure was necessary to respond to an apparent emergency that threatened the life or health of the Complainant under section 20(g) of the Act. As a result the Commissioner found that the disclosure was not contrary to section 7(1)(d) of the Act.

Statutes Cited: *Personal Information Protection Act*, R.S.A. 2003, c. P-6.5, ss. 7, 20(a) and 20(g).

I. BACKGROUND

[para 1] The Complainant was a tenant who lived alone in a block of apartments owned by Henry Rempel and Mary Anne Rempel (the "Organization"), who are an "organization" as defined by section 1(i)(v) of the *Personal Information Protection Act*, (the "Act") R.S.A. 2003, c. P-P6.5 (the "Act"). Section 1(i)(iv) of the Act reads:

- 1 In this Act,...
- (i) "organization" includes...
- (v) an individual acting in a commercial capacity,...

[para 2] The Complainant had disclosed to an employee of the Organization (the "employee", who lived in an apartment near the Complainant), information about his medical condition and his home alarm system.

[para 3] On the day in question the employee heard the Complainant's home alarm. The employee did not initially respond to the alarm as she thought the Complainant may be testing it. A short time passed and the alarm did not shut off. The employee, knowing of the medical ailments of the Complainant, became very concerned for his well being. The employee called 911 and during the call advised the 911 operator that the Complainant was on a specific medication. Shortly thereafter a police officer arrived at the apartment and he too was advised, by the employee, that the Complainant had a medical condition. The employee allowed the police officer to enter the Complainant's apartment. The apartment was found to be empty and it was determined that the alarm had accidentally activated. The alarm was disconnected.

[para 4] The Complainant heard of the incident and what the employee did. He later thanked the employee for her concern and advised her that he did not want anyone to know he was on medication. The employee assured the Complainant that, due to the circumstances, only the 911 operator and the attending police officer were advised of his medical ailment.

[para 5] The Complainant later initiated a complaint with my office under section 46(2) of the Act claiming that the employee's disclosure of his medical condition amounted to the Organization unlawfully collecting, using and disclosing his personal information contrary to section 7 of the Act (consent to the collection, use and disclosure of personal information).

[para 6] Mediation authorized under section 49 of the Act failed and the matter proceeded to a written inquiry under section 50 of the Act.

II. ISSUE

[para 7] The issue in this inquiry is:

Did the Organization disclose the Complainant's personal information without consent, contrary to section 7(1)(d) of the Act?

III. RECORDS AT ISSUE

[para 8] As this case concerns a complaint about the disclosure of personal information, there are no records directly at issue.

IV. DISCUSSION OF THE ISSUE

[para 9] The relevant legislation is section 7(1)(d) of the Act, which reads:

7(1) Except where this Act provides otherwise, an organization shall not, with respect to personal information about an individual,
...
(d) disclose that information unless the individual consents to the disclosure of that information.

The Complainant:

[para 10] The Complainant argued (from what can be gleaned from his hand written submissions) that the Organization, through its employee, disclosed his personal information concerning his medical condition, without consent.

[para 11] I note that although the Complainant was asked several times to provide a legible and understandable submission, he did not. At best the only applicable information one can decipher from his submissions is that he is very angry with the employee for disclosing information concerning his medical condition to emergency response personnel and the police officer.

The Organization:

[para 12] The Organization does not dispute the fact that its employee disclosed personal information about the Complainant to emergency response personnel and the police officer, without the consent of the Complainant. I find that pursuant to section 5(2) of the Act the Organization is responsible for its compliance with the Act.

[para 13] According to the Organization the overall assessment of what occurred is this: the Organization had a tenant who lived alone; the tenant advised the Organization's live-in employee that he had a medical condition; the employee was aware that the Complainant had an alarm set up in his apartment; the alarm sounded for a long period of time and as such there was created a reasonable belief of a possible medical emergency warranting a reasonable response.

[para 14] The Organization argued that the employee had good intentions regarding the interests of the Complainant and that in these perceived emergency circumstances the disclosure of the Complainant's personal information without consent is permissible under sections 20(a) and section 20(g) of the Act. Section 20(a) and section 20(g) of the Act read:

20 An organization may disclose personal information about an individual without the consent of the individual but only if one or more of the following are applicable:

(a) a reasonable person would consider that the disclosure of the information is clearly in the interests of the individual and consent of the individual cannot be obtained in a timely way or the individual would not reasonably be expected to withhold consent;...

(g) the disclosure of the information is necessary to respond to an emergency that threatens the life, health or security of an individual or the public;...

[para 15] In the submission of the Organization it speculated as to what may have happened if the Complainant was in fact in need of urgent medical attention. The Organization doubted that the Complainant would have wanted the employee to withhold his personal medical information from the emergency response personnel just because she did not have his consent to disclose that information. The Organization argued that it may be accepted that the Complainant shared the information with the employee so that she would be aware of his medical needs in the event of an emergency. The employee was not initially aware that the alarm was set off accidentally and was therefore faced with what she perceived to be a medical emergency. The Organization argued that the employee reacted in a reasonable manner and in doing so acted in the best interests of the Complainant.

[para 16] When deciding upon the application of section 20(a) of the Act one must decide whether a reasonable person would consider disclosure of the information by the Organization to be clearly in the interests of the Complainant and whether the consent of the Complainant could not be obtained in a timely way or whether the Complainant would not reasonably be expected to withhold consent.

[para 17] Section 2 of the Act defines the standard as to what is reasonable. Section 2 of the Act, which reads:

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 18] I find that in these circumstances there was an apparent medical emergency and that a reasonable person would accept the disclosure of the personal medical information of the Complainant was reasonable. I note that at the time the alarm was noticed there were no signs of another type of emergency, such as a fire or break and enter, that would suggest another type of emergency. I also note that the Complainant, at a time shortly before the incident, took the time to advise the employee of the Organization of his particular medical needs. Further, I am satisfied that a reasonable person knowing what the employee of the Organization knew about the Complainant, would reasonably conclude that a medical emergency was likely taking place. I therefore find the disclosure to have been clearly in the interests of the Complainant and at the time the consent of the Complainant could not be obtained in timely way. I further find that, in this apparent medical emergency, the Complainant would not reasonably be expected to withhold consent. Therefore section 20(a) of the Act allows disclosure of the Complainant's personal information, without consent.

[para 19] I also find that, in these circumstances, the disclosure was allowable under section 20(g) of the Act. I base my decision on the fact that the employee of the Organization, knowing that the Complainant lived alone and had medical concerns, upon hearing the alarm coming from the residence of the Complainant and not being able to communicate with the Complainant, assessed the situation to be an emergency that threatened the life or health of the Complainant. The resulting disclosure of personal information is therefore allowable under section 20(g) of the Act as being necessary to respond to an apparent emergency that threatened the life or health of the Complainant.

V. ORDER

[para 20] I make the following Order under section 52 of the Act.

[para 21] I find that the Organization did not require the consent of the Complainant to disclose his personal information as the disclosure was made in accordance with sections 20(a) and 20(g) of the Act (disclosure without consent). Therefore, the disclosure was not contrary to section 7(1)(d) of the Act.

Frank Work Q.C.,
Information and Privacy Commissioner