

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER P2007-005

February 14, 2008

POINT CENTRIC INC.

Case File Number P0372

Office URL: www.oipc.ab.ca

Summary: The Complainant complained to the Commissioner that Point Centric Inc. (the Organization) had disclosed his personal information contrary to the *Personal Information Protection Act* (the Act) when an employee of the Organization emailed a copy of his termination letter to a prospective employee.

The Organization conceded that it had contravened section 7 of the Act by disclosing the Complainant's personal information without his consent.

The Commissioner found that the Organization contravened section 19 of the Act, as it did not establish that it had a reasonable purpose for disclosing the Complainant's personal information. The Commissioner also found that the Organization had contravened section 7 of the Act. The Commissioner ordered the Organization to cease disclosing the Complainant's personal information contrary to sections 7 and 19.

Statutes Cited: **AB:** *Personal Information Protection Act* S.A. 2003, c. P-6.5 ss.1, 7, 15, 18, 19, 21

I. BACKGROUND

[para 1] On December 8, 2005, the Complainant made a complaint to the Commissioner that Point Centric Inc. had disclosed his personal information to a third

party contrary to the *Personal Information Protection Act* (the Act) when it copied an email terminating his employment to a prospective employee.

[para 2] I authorized mediation to resolve the issue. As mediation was unsuccessful, the matter was scheduled for a written inquiry.

[para 3] The Complainant provided both initial and rebuttal submissions. The Organization provided initial submissions only. In its submissions, the Organization conceded the following:

Specifically, Point Centric admits that it disclosed (the Complainant's) personal information to (a prospective employee) without the Complainant's consent on October 19, 2005 in contravention of section 7 of PIPA. However, at the time (the employee of the Organization who disclosed the information) believed he had a valid business purpose for disclosing such information. (The employee of the Organization who disclosed the information) wanted to ensure that (the prospective employee) ... be aware of the circumstances... as it would directly affect (his) job duties with Point Centric...

Point Centric does not deny the seriousness of disclosing (the Complainant's) personal information without his consent. Shortly after receipt of (the Complainant's) privacy complaint, (the Organization) retained counsel to draft the Privacy Policy and to advise Point Centric of its obligations pursuant to private sector privacy legislation.

II. RECORDS AT ISSUE

[para 4] There are no records at issue.

III. ISSUES

On December 12, 2006, my office sent a notice to the parties, identifying the following issues for the inquiry.

Issue A: Did the Organization disclose “personal employee information” of the Complainant as that term is defined in PIPA section 1(j)?

Issue B: Did the Organization disclose the “personal employee information” in contravention of, 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 disclose the information without consent as permitted by sections 2 1of PIPA?**
- b. **If the Organization did not have the authority to disclose the information without consent, did the Organization obtain the Complainant's consent in accordance with section 8 of the Act before disclosing the information?**

Issue C: If the Organization did not disclose “personal employee information” of the Complainant, did it disclose “personal information” of the Complainant as that term is defined in PIPA section 1(k)?

Issue D: Did the Organization disclose the information in contravention of, or in compliance with, section 7(1) of PIPA (no disclosure without either authorization or consent)? In particular,

- a. Did the Organization have the authority to disclose the information without consent, as permitted by section 20 of PIPA?**
- b. If the Organization did not have the authority to 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?**

Issue E: Did the Organization disclose the information contrary to, or in compliance with, section 19(1) of PIPA (disclosure for purposes that are reasonable)?

Issue F: Did the Organization disclose the information contrary to, or in compliance with, section 19(2) of PIPA (disclosure to the extent reasonable for meeting the purposes)?

IV. DISCUSSION OF ISSUES

Issue E: Did the Organization disclose the information contrary to, or in compliance with, section 19(1) of PIPA (disclosure for purposes that are reasonable)?

Issue F: Did the Organization disclose the information contrary to, or in compliance with, section 19(2) of PIPA (disclosure to the extent reasonable for meeting the purposes)?

[para 5] I have decided to address Issues E and F first, as answering these questions will assist me to answer the other questions.

[para 6] Section 19 limits the purposes for which an organization may collect personal information. It states:

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

(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.

Section 19 (1) is clear that the purpose for collecting personal information must be reasonable. Section 19(2) is equally clear that the collection of personal information must

be reasonably related to the purpose for collection. For example, there may be business purposes that are reasonable in the abstract, but an organization must also establish that its disclosure of personal information, in this case, the disclosure of an individual's termination notice to a prospective employee is reasonably related to that purpose to meet the requirements of section 19.

[para 7] The parties are in agreement that the Organization disclosed the Complainant's personal information within the meaning of the Act.

[para 8] As indicated above, Counsel for the Organization argues that the employee of the Organization who disclosed the Complainant's personal information did so for what he believed to be business reasons. However, the Organization provided no evidence in support of this argument. In particular, it did not provide affidavit or other direct evidence from this employee to explain what his purpose was in copying a prospective employee with the Complainant's termination notice. As a result, the Organization has not established that it had a reasonable purpose in disclosing the Complainant's personal information. I therefore find that the disclosure was contrary to section 19 of the Act.

Issue A: Did the Organization disclose “personal employee information” of the Complainant as that term is defined in PIPA section 1(j)?

Issue B: Did the Organization disclose the “personal employee information” in contravention of, or in compliance with section 7(1) of PIPA (no collection, use or disclosure without either authorization or consent)? In particular,

- c. Did the Organization have the authority to disclose the information without consent as permitted by sections 21 of PIPA?**
- d. If the Organization did not have the authority to disclose the information without consent, did the Organization obtain the Complainant's consent in accordance with section 8 of the Act before disclosing the information?**

Issue C: If the Organization did not disclose “personal employee information” of the Complainant, did it disclose “personal information” of the Complainant as that term is defined in PIPA section 1(k)?

[para 9] I will address these issues together as they are interrelated.

[para 10] “Personal employee information” is a category of personal information that may be collected, used, or disclosed by an organization without the consent of the individual under sections 15, 18 and 21 of the Act. “Personal employee information” is defined in section 1(j) of the Act as:

1(j) “personal employee information” means, in respect of an individual who is an employee or a potential employee, personal information reasonably

required by an organization that is collected, used or disclosed solely for the purposes of establishing, managing or terminating

- (i) an employment relationship, or*
- (ii) a volunteer work relationship*

[para 11] The Complainant's termination letter contains personal information reasonably required by an organization that is collected, used, or disclosed solely for the purposes of establishing, managing or terminating an employment relationship. I therefore find that the letter contains the personal employee information of the Complainant.

[para 12] Section 21 creates an exception to the requirement for consent to disclose personal information if the information is personal employee information and the disclosure is for certain purposes. It states:

21(1) Notwithstanding anything in this Act other than subsection (2), an organization may disclose personal employee information about an individual without the consent of the individual if

- (a) the individual is or was an employee of the organization, or*
- (b) the disclosure of the information is for the purpose of recruiting a potential employee.*

(2) An organization shall not disclose personal information about an individual under subsection (1) without the consent of the individual unless

- (a) the disclosure is reasonable for the purposes for which the information is being disclosed,*
- (b) the information consists only of information that is related to the employment or volunteer work relationship of the individual, and*
- (c) in the case of an individual who is an employee of the organization, the organization has, before disclosing the information, provided the individual with reasonable notification that the information is going to be disclosed and of the purposes for which the information is going to be disclosed.*

(3) Nothing in this section is to be construed so as to restrict or otherwise affect an organization's ability to disclose personal information under section 20.

[para 13] The Complainant was an employee of the Organization at the time of the disclosure, and so the requirements of section 21(1) are met. However, I have already found that the Organization has not provided evidence to establish its purpose in disclosing the Complainant's personal information was reasonable. Section 21(2)(a) prohibits an organization from disclosing personal employee information if the purpose for disclosure is unreasonable.

[para 14] I therefore find that section 21 does not apply to permit the Organization to disclose the Complainant's personal employee information without consent.

Issue D: Did the Organization disclose the information in contravention of, or in compliance with, section 7(1) of PIPA (no disclosure without either authorization or consent)? In particular,

- a. Did the Organization have the authority to disclose the information without consent, as permitted by section 20 of PIPA?**
- b. If the Organization did not have the authority to disclose the information without consent, did the Organization obtain the Complainant's consent in accordance with section 8 of the Act before disclosing the information?**

[para 15] Section 7 of the Act explains when consent is required to collect, use, or disclose personal information. It 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.*

(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.

(3) An individual may give a consent subject to any reasonable terms, conditions or qualifications established, set, approved by or otherwise acceptable to the individual.

[para 16] As noted above, the Organization has conceded that it contravened section 7 of PIPA when its employee sent the Complainant's termination letter to a prospective employee without first obtaining his consent to do so.

[para 17] I would also add that section 7 must be read within the context of section 19 of the Act. As the Act prohibits disclosure for unreasonable purposes, it does not matter whether the Complainant consented to the disclosure or not: the Organization is prohibited from disclosing personal information if its purpose for disclosure is unreasonable. The limit section 19 places on disclosure would have no purpose if individuals could consent to the unreasonable disclosure of personal information under section 7.

[para 18] For these reasons, I find that the Organization disclosed the Complainant's personal information contrary to section 7 of the Act.

V. ORDER

[para 19] I make this Order under section 52 of the Act.

[para 20] I order the Organization to cease disclosing the personal information of the Complainant in contravention of sections 7 and 19 of the Act.

[para 21] I further order the Organization to notify me, in writing, within 50 days of receiving a copy of this Order that it has complied with the Order.

Frank Work, Q.C.
Information and Privacy Commissioner