

# ALBERTA

## OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

### ORDER P2007-015

January 31, 2008

### LOBLAW COMPANIES LIMITED

Case File Number P0768

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

**Summary:** The Drugstore Pharmacy at a Real Canadian Superstore ("Pharmacy"), operating under the legal entity of Loblaw Companies Limited ("Organization" or "Loblaw") required photographic identification ("Photo ID") before it would sell Exact ACET C&C, which is a Schedule 2 drug to the Complainant, for his wife. The Complainant provided a driver's licence as Photo ID. The Pharmacy said that it viewed the photograph on the driver's licence, but did not record the information in any manner in a record.

The Complainant alleged that Loblaw, through the Pharmacy, collected personal information in the form of the Photo ID in contravention of the *Personal Information Protection Act*, S.A. 2003, c. P-6.5 ("PIPA"). The Pharmacy said that the collection of Photo ID for the purpose of sale of this Schedule 2 drug is allowed under both PIPA and HIA. Schedule 2 drugs are non-prescription medications that are sold from "behind the counter" at a pharmacy under the direct supervision of a pharmacist.

The Adjudicator found that section 4(3)(f) of PIPA applies, which means that the Photo ID is excluded from the application of PIPA, because the information falls under the *Health Information Act*, R.S.A. 2000, c. H-5 ("HIA"). This provision is known as the "HIA carve out" from PIPA.

The Complainant also alleged that the Pharmacy collected the Photo ID in contravention of the *Health Information Act*, R.S.A. 2000, c. H-5 ("HIA"). The Inquiry was held concurrently with an inquiry for Case File Number H0940 under HIA, which involved the Pharmacy and the same Applicant and resulted in Order H2007-002.

**Orders Cited:** AB: HIA: H2007-002; FOIP: F2007-027 and F2004-005 & H2004-001.

**Statutes Cited: AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 4(1)(u); *Health Information Act*, R.S.A. 2000, c. H-5; *Personal Information Protection Act*, S.A. 2003, c. P-6.5, ss. 4(3)(f), 7, 8, 11, 14 and 52.

## I. BACKGROUND

[para 1] The Drugstore Pharmacy at a Real Canadian Superstore (“Pharmacy”), operating under the legal entity of Loblaw Companies Limited (“Organization” or “Loblaw”) required photographic identification (“Photo ID”) before it would sell Exact ACET C&C, which is a Schedule 2 drug to the Complainant, for his wife. The Complainant provided a driver’s licence as Photo ID. The Pharmacy said that it viewed the photograph on the driver’s licence, but did not record the information in any manner in a record.

[para 2] The Complainant alleged that Loblaw, through the Pharmacy, collected personal information in the form of the Photo ID in contravention of the *Personal Information Protection Act*, S.A. 2003, c. P-6.5 (“PIPA”). The Pharmacy said that the collection of Photo ID for the purpose of sale of this Schedule 2 drug is allowed under both PIPA and HIA. Schedule 2 drugs are non-prescription medications that are sold from “behind the counter” at a pharmacy under the direct supervision of a pharmacist.

[para 3] As the matter was not resolved by mediation, it was set down for a written inquiry (the “Inquiry”). The Information and Privacy Commissioner, Frank Work, Q.C. (the “Commissioner”), delegated me to hear the Inquiry under HIA. At the Inquiry the parties provided written initial and written rebuttal submissions that were exchanged between the parties.

[para 4] The Complainant also alleged that the Pharmacy collected the Photo ID in contravention of the *Health Information Act*, R.S.A. 2000, c. H-5 (“HIA”). The Inquiry was held concurrently with an inquiry for Case File Number H0940 under HIA, which involved the Pharmacy and the same Applicant and resulted in Order H2007-002. The parties provided the same written submissions for both inquiries.

## II. RECORDS AT ISSUE

[para 5] There are no records at issue in the usual sense, as the Inquiry pertains to authority to collect rather than access to information in a record. The information at issue is viewing a photograph on a driver’s licence. The Complainant also verbally provided his first and last name, which the Pharmacy recorded onto a computer spreadsheet (which is *not* at issue).

## III. ISSUES

[para 6] The issues before the Inquiry are as follows:

ISSUE A: Did the Organization collect the Photo ID in contravention of section 8 of PIPA (type of consent for collection of personal information)?

ISSUE B: Did the Organization collect the Photo ID in contravention of section 7 of PIPA (collection of personal information permitted with consent)?

ISSUE C: Did the Organization collect the Photo ID in contravention of section 11 of PIPA (limitations on collection of personal information)?

ISSUE D: Did the Organization collect the Photo ID in contravention of section 14 of PIPA (collection of personal information permitted without consent)?

[para 7] The references to the “Applicant” in the Notice of Inquiry are to be read as references to the “Complainant” in this Order. In this Order, the words “collects”, “collected” and “collection” have a corresponding meaning to “collect”.

#### **IV. FACTS, EVIDENCE AND ARGUMENT**

[para 8] The background facts, evidence and argument that pertain to the Inquiry are set out in detail in Order H2007-002, so that information will not be repeated in this Order. The findings of fact in that Order are that the Complainant verbally provided first and last name, which the Pharmacy entered on the spreadsheet (which is *not* at issue).

[para 9] The Pharmacy viewed the photograph on the driver’s licence, but did not subsequently record the information in a record. Except for name, no information about the Complainant was written, photographed, recorded or stored in any manner in a record by the Pharmacy.

#### **V. PRELIMINARY ISSUE**

##### ***HIA carve out***

[para 10] Section 4(3)(f) of PIPA says:

4(3) This Act does not apply to the following:

(f) health information as defined in the *Health Information Act* to which that Act applies.

[para 11] Section 4(3)(f) of PIPA addresses the interface of PIPA and HIA, which is sometimes described as the “HIA carve out” in PIPA. Orders issued from the Office have addressed a similar interface between HIA and the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 (“FOIP”). Orders F2004-005 & H2004-001

describe the interface of HIA and FOIP, as set out in the “HIA carve out” in FOIP, as follows:

The effect of the “HIA carve out” is that in situations where information could fall under either HIA or FOIP, FOIP does not apply where the information is properly categorized as health information as that term is defined in HIA. The effect of the “HIA carve out” is that FOIP ends where HIA begins (para 89; also, Order F2007-027 (para 25)).

[para 12] Section 4(3)(f) of PIPA says that PIPA does not apply to information to which HIA applies. The parallel provision in FOIP is section 4(1)(u), which means that FOIP does not apply to the information that falls under HIA. As I have found in Order H2007-002, the Photo ID is information to which HIA applies, so the Photo ID is carved out of PIPA by section 4(3)(f) of PIPA. This means that PIPA does not apply to the Complainant’s Photo ID.

[para 13] Therefore, I find that the Photo ID information is excluded from PIPA. In my view, this finding is consistent with the intended interface of PIPA and HIA. HIA creates rights and powers for individuals over their own health information. The practical effect of the “HIA carve out” from PIPA is that the information at issue in the Photo ID remains under HIA. This means that the HIA privacy regime applies to the information.

## VI. DISCUSSION OF INQUIRY ISSUES

**ISSUE A: Did the Organization collect the Photo ID in contravention of section 8 of PIPA (type of consent for collection of personal information)?**

**ISSUE B: Did the Organization collect the Photo ID in contravention of section 7 of PIPA (collection of personal information permitted with consent)?**

**ISSUE C: Did the Organization collect the Photo ID in contravention of section 11 of PIPA (limitations on collection of personal information)?**

**ISSUE D: Did the Organization collect the Photo ID in contravention of section 14 of PIPA (collection of personal information permitted without consent)?**

[para 14] I have found that the Photo ID is information to which HIA applies and is excluded from and carved out of PIPA by section 4(3)(f) of PIPA. For that reason, I find that there is no information to consider under PIPA for the above Inquiry issues. Given the above finding, I do not have authority to decide any further issues at the Inquiry.

## VII. ORDER

[para 15] I make the following Order under section 52 of PIPA:

- I find that section 4(3)(f) of PIPA applies, which means that the Photo ID is excluded from the application of PIPA, because the information falls under the *Health Information Act*, R.S.A. 2000, c. H-5 (“HIA”); and
- Given the above finding, I do not have authority to decide any further issues at the Inquiry.

Noela Inions, Q. C.  
Adjudicator