

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER P2010-001

September 29, 2010

AVONLEA PHOTOGRAPHY STUDIO INC.

Case File Number P1202

Office URL: www.oipc.ab.ca

Summary: An individual made a complaint that Avonlea Photography Studio Inc. (the Organization) had left a cheque for her with her home address on it with a co-worker. Later, she requested that the Commissioner review the issue of whether the Organization had a privacy policy. Section 6(a) of the *Personal Information Protection Act* (PIPA), requires an organization to “develop and follow policies and practices that are reasonable for the organization to meet its obligations” under PIPA. Because the Complainant chose not to be identified, the Commissioner determined that only the issue of whether the Organization had developed reasonable policies and practices for meeting its obligations under PIPA, as required by section 6(a) of PIPA, would be considered at the inquiry.

The Organization took the position that an organization with two employees is not required to develop policies and practices under section 6(a) of PIPA.

The Adjudicator determined that the obligations set out in section 6(a) of PIPA applied to the Organization and that it was required to develop reasonable policies and practices. However, she found that, despite its arguments, the Organization had complied with this provision, as its policy and practice regarding its treatment of personal information in relation to making cheques available to employees was reasonable for meeting its obligations under PIPA.

Statutes Cited: **AB:** *Personal Information Protection Act* S. A. 2003, c. P-6.5 ss. 1, 2, 6, 52 **BC:** *Personal Information Protection Act* S. B. C. 2003, c. 63 s. 5

Authorities Cited: AB: Order P2006-004 **BC:** Order P06-04

Barber, Katherine, ed. *Canadian Oxford Dictionary*. 2nd ed. Don Mills: Oxford University Press, 2004.

I. BACKGROUND

[para 1] On December 22, 2008, the Complainant made a complaint to the Commissioner alleging that Avonlea Photography Studio Inc. (the Organization) had disclosed her personal information when it left her pay cheque in an envelope with her address visible on the front of it, in the custody of an employee, at the Organization's office.

[para 2] The Commissioner appointed an officer to investigate the Complainant's allegation.

[para 3] On June 3, 2009, the Complainant requested that the Commissioner conduct an inquiry regarding the Organization's "lack of privacy policy".

[para 4] On April 19, 2010, the Commissioner decided that he would exercise his discretion to conduct an inquiry into the issue of whether PIPA requires the Organization to have a privacy policy. He informed the Complainant and the Organization of this decision.

[para 5] A notice of the inquiry was sent to the parties on May 11, 2010. The issue for the inquiry is stated in the notice as:

Did the Organization comply with section 6(a) of the Act (develop and follow policies and practices)?

[para 6] The Complainant provided her request for an inquiry and her original complaint as her submissions for the Inquiry. The Organization did not provide formal submissions, but sent letters to the Commissioner on April 21, 2010 and June 9, 2010 objecting to the inquiry.

[para 7] The Complainant requested that she remain anonymous for the inquiry and her submissions and original complaint were not exchanged with the Organization on the basis that these would reveal her identity. However, I find that the information contained in her complaint and the facts giving rise to it are relevant to the issue of whether the Organization has developed policies and practices that are reasonable for meeting its obligations under PIPA in this case. I note that the facts giving rise to the complaint serve to identify the Complainant to some extent. However, I also note that a certain amount of detail regarding the complaint, and therefore the Complainant, has been disclosed to the Organization and that this information also appears in the Organization's submissions. I have therefore decided to refer to that information in this order so that I may address the issue for inquiry.

II. ISSUE

Issue A: Did the Organization comply with section 6(a) of the Act (develop and follow policies and practices that are reasonable for meeting its obligations under PIPA)?

III. DISCUSSION OF ISSUE

[para 8] Section 6 of PIPA imposes a mandatory duty on organizations to develop policies and practices that are reasonable for meeting their duties under PIPA. Section 6 of PIPA now states:

6(1) An organization must develop and follow policies and practices that are reasonable for the organization to meet its obligations under this Act.

(2) If an organization uses a service provider outside Canada to collect, use, disclose or store personal information for or on behalf of the organization, the policies and practices referred to in subsection (1) must include information regarding

- (a) the countries outside Canada in which the collection, use, disclosure or storage is occurring or may occur, and*
- (b) the purposes for which the service provider outside Canada has been authorized to collect, use or disclose personal information for or on behalf of the organization.*

(3) An organization must make written information about the policies and practices referred to in subsections (1) and (2) available on request.

[para 9] However, this version of section 6 was proclaimed in force on May 1, 2010, after the Complainant made her complaint. At the time the Complainant made her complaint, section 6 stated:

- 6 An organization must*
- (a) develop and follow policies and practices that are reasonable for the organization to meet its obligations under this Act, and*
 - (b) make information about the policies and practices referred to in clause (a) available on request.*

As the issue for inquiry turns on whether the Organization was meeting its duties under PIPA in the circumstances giving rise to the complaint, I will consider whether the Organization complied with its duties under the version of section 6 that was in force at the time the Complainant made her complaint.

[para 10] In Order P06-04, the former Commissioner of British Columbia considered the meaning of section 5(c) of the *Personal Information Protection Act* of British Columbia. Section 5 of that Act states:

5 An organization must

- (a) develop and follow policies and practices that are necessary for the organization to meet the obligations of the organization under this Act,*
- (b) develop a process to respond to complaints that may arise respecting the application of this Act, and*
- (c) make information available on request about*
 - (i) the policies and practices referred to in paragraph (a), and*
 - (ii) the complaint process referred to in paragraph (b).*

[para 11] The former Privacy Commissioner of British Columbia noted that there is no requirement that an organization provide a *written* copy of its policies and practices on request. He said:

Section 5(c) says an organization must “make information available on request about” its “policies and practices” developed under s. 5(a) and about the “complaint process” required under s. 5(b). An organization may find that it is easier to simply hand over a copy of its privacy policy or complaint process than to answer questions or otherwise make information available. There is certainly a good business case for organizations to be transparent with customers, employees and others with whom they deal. Openness about good practices and policies will foster trust and thus loyalty, which can translate into repeat business and perhaps even lower employee turnover.

There is, however, no duty under s. 5(c) for an organization to provide anyone a copy of any written policies and procedures, on request or otherwise. The legislative language is clear. It only requires organizations to make “information about” policies, practices and processes available on request. This interpretation both respects the clear legislative language of s. 5(c) and accords with the legislative intent underlying PIPA.

Sections 5(a) and (c) of the British Columbia Act are similar in substance to the former sections 6(a) and (b) of PIPA.

[para 12] In Order P2006-004, the Commissioner said:

The Law Society provides detailed evidence by way of an affidavit from its Information Officer and attached documents about the steps it has taken to meet its obligations under section 6 of the Act. This affidavit indicates that although the privacy policy was not formally approved until September, 2005, it has been in effect and followed by the LSA since January 1, 2004, the date the Act came into effect. I am satisfied that this policy is reasonable for the Law Society to meet its obligations under the Act. The CSA Model Policy has no bearing on this question.

With regard to the Law Society's failure to provide to the A/C a copy of its policy regarding the handling of privacy complaints, the Law Society states that its privacy policy indicates that individuals who have concerns about how the Law Society has administered their personal information should contact the Law Society's Information Officer. It says the policy

is no more specific than this because the steps that will be taken by the Information Officer will depend on the nature of the complaint. I accept this explanation.

I take from this order that a policy need not be formally or “officially” approved, so long as it is reasonable and followed by an organization. Further, the duty to provide information about a policy or practice does not impose a requirement that information be written.

[para 13] “Policy”, as that term is defined in the *Canadian Oxford Dictionary*, refers to “a course of action adopted or proposed by a government, party, business, or individual. “Practice” is defined as a “procedure generally” or as “an established method”. Neither definition indicates that a policy or practice need be written.

[para 14] In my view, the duty to develop reasonable policies and practices in order to meet obligations under PIPA does not necessarily require formally setting these policies and practices down in writing. Moreover, section 6 does not require an organization to create a document entitled a “privacy policy” or to make such a document available on request, although this may be a desirable practice.

[para 15] Section 2 of PIPA explains how the term “reasonable” should be interpreted for its purposes. It states:

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.

Therefore, in determining whether the Organization has developed and followed policies and practices that are reasonable, I must consider whether a reasonable person would consider the policies and practices the Organization has developed appropriate in the circumstances. In the present case, the circumstances are those giving rise to the complaint; i.e., that the Organization is small with a limited number of employees and had an obligation to provide the Complainant with her pay cheque. The question I must answer is whether the Organization has developed a policy or practice for providing its employees with their pay cheques in compliance with PIPA that is appropriate in the circumstances.

[para 16] In this inquiry, the Organization bears the burden of establishing that it has developed a reasonable policy and practice for insuring that the personal information of employees is not disclosed contrary to PIPA when the Organization pays them.

[para 17] In its correspondence objecting to the inquiry, the Organization explained that as an organization with only two full-time employees and should not be required to develop a privacy policy for that reason. However, the Organization also explained its procedure for paying employees, its reasons for following this procedure, and explained how the procedure was followed in the Complainant's case:

The complaint is that my company has the address and name of the employee in a window of an envelope. This is a very common practice when mailing cheques and documents. Even the Government of Canada sends documents with the recipient['s] name and address in a window envelope.

...We put her name and address on a paycheck that was in a SEALED envelope with a window. Nothing other than her name and address were revealed. Names and addresses need to be clearly shown in order to provide postal delivery. If cheques are not picked up they are automatically mailed. I have done NOTHING wrong or compromised the privacy of anyone in this matter. [emphasis in original]

[para 18] The Complainant did not make any submissions regarding the Organization's privacy policy, other than to assert in her complaint that it does not have one. There is no evidence that she asked the Organization to make information about its cheque payment procedure to her. However, in her submissions, she explained that her complaint was based on the fact that her employer left her cheque in the office for her to pick up in the custody of an employee whom she considered hostile. She objected to the fact that her address was on the envelope where it was visible to this employee.

[para 19] Section 1(i) of PIPA defines the term "organization" in the following way:

I In this Act,

...

- (i) "organization" includes
- (i) a corporation,
 - (ii) an unincorporated association,
 - (iii) a trade union as defined in the Labour Relations Code,
 - (iv) a partnership as defined in the Partnership Act, and
 - (v) an individual acting in a commercial capacity,

but does not include an individual acting in a personal or domestic capacity;

As a commercial entity carrying on business in Alberta, the Organization is an organization under section 1 of PIPA. It is therefore required to comply with PIPA, including the requirements of section 6. As a result, it must develop policies and practices that are reasonable for fulfilling its obligations under PIPA.

[para 20] I understand from the Organization's arguments that it is a small business with two employees and that it did not have options as to whom it could assign office functions on the day in question. Further, I understand that the employee to whom the

Complainant objected was given custody of the Complainant's pay cheque so that she could provide it to the Complainant should the Complainant come in to the office to pick it up before it was mailed out. I infer from its explanation that the Organization's purpose in doing so was to ensure that the Complainant received her pay cheque promptly.

[para 21] Both the Complainant and the Organization agree that the Complainant's cheque was left in a sealed envelope in the custody of the employee. The Organization explained that if the Complainant did not pick it up on the day it was ready, the cheque would have been mailed to her the following day. The Complainant's name and address were on the envelope so that the cheque could be mailed to her. Further, the Organization indicates that addressing envelopes it intends to mail is its standard practice.

[para 22] I agree with the Organization that putting the name and address of an employee to whom it intends to mail a cheque on the envelope is a reasonable and sensible practice, as this ensures successful delivery of the cheque. The envelope was sealed, so that the amount of the cheque and any other personal information contained in the envelope could not inadvertently fall out and be disclosed in that way. In addition, I find that leaving a cheque in the custody of an employee is a reasonable practice, as this would reduce the possibility of theft or loss of the cheque.

[para 23] The primary objection of the Complainant was a perceived animosity between herself and the employee who had custody of the cheque. Under PIPA, the quality of relationships between individuals is irrelevant. Rather, the question to be asked is whether the employee who had custody of the cheque was authorized to have custody of the cheque and the information on the envelope. As this employee was given the cheque so that she could provide it to the Complainant, it is clear that the Organization authorized her to have custody of the cheque and the information on the envelope. Moreover, given the size of the Organization in this case, it appears that there was no other option for the Organization to make the cheque available to the Complainant on that day. I find that leaving the cheque in the custody of the only employee available was appropriate in the circumstances.

[para 24] For these reasons, I find that the Organization met its duty to develop reasonable policies and practices in relation to making pay cheques available to its employees and that this practice has enabled it to meet its obligations under PIPA.

V. ORDER

[para 25] I make this Order under section 52 of the Act.

[para 26] I confirm that the Organization met its duty under section 6(a) of PIPA.

Teresa Cunningham
Adjudicator