

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER P2012-10

October 31, 2012

**BUDGET RENT-A-CAR OF CALGARY (1968) LTD.
(46508 ALBERTA LTD.)**

Case File Number P0962

Office URL: www.oipc.ab.ca

Summary: Three individuals who rented vehicles from Budget Rent-a-Car of Calgary Ltd. (Budget), were required to produce their driver's licence as a condition of proceeding with the transaction. Budget also made photocopies of the licences, which it retained. The individuals complained that the photocopying and retention of the licences was in contravention of the *Personal Information Protection Act* (PIPA). They also sought assurance that there were reasonable security arrangements in place for their information.

The Adjudicator found that Budget had failed to establish that the photocopying of the licences met the requirement that the practice was necessary for the company to provide the service of renting vehicles, within the terms of section 7(2) of PIPA. She also found that the extent of the collection was not reasonable for the purpose under section 11(2) of the Act. As well she found that that Budget had failed to provide proper notice of the purpose for collection within the terms of section 13, and that it had failed to establish that it had proper security arrangements in place as required by section 34.

Statutes Cited: **AB:** *Personal Information Protection Act* S.A. 2003, c. P-6.5, ss. 7, 7(1), 7(2), 8, 11(1), 11(2), 13, 14, 34, 35(1), 52; *Freedom of Information and Protection of Privacy Act* S.A. 2000, c. F-25, s. 41(b).

Orders Cited: **AB:** P2008-004, F2008-029.

Court Cases Cited: AB: *Leon's Furniture Ltd. v. Alberta (Information and Privacy Commissioner)*, 2011 ABCA 94.

I. BACKGROUND

[para 1] On March 26, 2008, three individuals rented two vehicles from the Respondent Organization Budget (which they did as employees of an organization that has a “corporate account” with Budget). Each of them was required to produce their driver’s licence as a condition of proceeding with the transaction. Budget viewed the licences to ensure that they belonged to the persons renting the vehicle. It also made photocopies of the licences, which it retained.

[para 2] The individuals’ complaint was that the photocopying and retention of the licences was in contravention of the *Personal Information Protection Act* (PIPA or the Act). They did not complain about the requirement to provide their driver’s licence numbers, which they regarded as reasonable in the circumstances

[para 3] As well, the individuals expressed their view that if the photocopying were held to be justified, the photocopies should not be retained for periods longer than that covered by the rental contract. They also sought assurance that a corporate or branch retention policy exists and is adhered to, and that there are reasonable security arrangements in place, including for secure destruction.

[para 4] Budget explained that such photocopies are routinely made, and are destroyed after the rented vehicle is returned. It also described the security measures it has in place with respect to the photocopied information.

[para 5] After reviewing the submissions of Budget, I asked it to answer a number of specific questions, and gave the Complainants an opportunity to respond. As I was still of the view that I had insufficient information to dispose of the issues in this case, I invited the Calgary Police Service, as well as a number of other car rental companies and the Associated Canadian Car Rental Operators, to participate and to provide answers to additional questions. I received submissions from the Calgary Police Service, the Associated Canadian Car Rental Operators, Avis Budget Group, and Discount Car and Truck Rentals.

II. RECORDS AT ISSUE

[para 6] The records at issue are the photocopies of the Complainants’ driver’s licences.

III. ISSUES

[para 7] The issues set out in the Notice of Inquiry were as follow:

Issue A: Did the Organization collect the Complainants’ “personal information” as that term is defined in PIPA? If yes,

Issue B: Did the Organization collect the Complainants’ personal information contrary to, or in compliance with, section 7(1) of PIPA (no collection without either authority or consent)? In particular,

- a. Did the Organization have the authority to collect the Complainants’ personal information without consent, as permitted by section 14 of PIPA?
- b. If the Organization did not have the authority to collect the Complainants’ personal information without consent, did the Organization obtain the Complainants’ consent in accordance with section 8 of the Act before collecting? In particular,
 - i. Did the individuals consent in writing or orally, or
 - ii. Are the individuals deemed to have consented by virtue of the conditions in section 8(2)(a) and (b) having been met? or
 - iii. Is the collection authorized by virtue of the conditions in 8(3)(a), (b) and (c) having been met?

Issue C: Did the Organization, as a condition of supplying a product or service, require the Complainants to consent to the collection of their personal information beyond what is necessary to provide the product or service, contrary to section 7(2)?

Issue D: Did the Organization collect the Complainants’ personal information contrary to, or in accordance with, sections 11(1) of PIPA (collection for purposes that are reasonable)?

Issue E: Did the Organization collect the Complainants’ personal information contrary to, or in accordance with, sections 11(2) of PIPA (collection to the extent reasonable for meeting the purposes)?

Issue F: Did the Organization collect the Complainants’ personal information contrary to, or in accordance with, section 13 of PIPA? In particular, was it required to provide, and did it provide, notification, before or at the time of collecting the information, in accordance with section 13 of PIPA?

Issue G: Did the Organization comply with section 34 of the Act (reasonable security arrangements)?

Issue H: Did the Organization retain the Complainants’ personal information contrary to, or in accordance with, section 35 of PIPA?

IV. DISCUSSION OF ISSUES

Issue A: Did the Organization collect the Complainants' "personal information" as that term is defined in PIPA?

[para 8] A person's driver's licence contains personal information, consisting of their name, address, birthdate, physical description and licence category. It is a unique identifying number. Previous orders of this office, as well as decisions of the Courts, have held that a driver's licence number is personal information. (See Order P2008-004; *Leon's Furniture Ltd. v. Alberta (Information and Privacy Commissioner, 2011 ABCA 94.)*) I find the Complainants' driver's licences were the personal information of the Complainants.

Issue B: Did the Organization collect the Complainants' personal information contrary to, or in compliance with, section 7(1) of PIPA (no collection without either authority or consent)? In particular,

- a. Did the Organization have the authority to collect the Complainants' personal information without consent, as permitted by section 14 of PIPA?**

[para 9] Budget did not argue that it was authorized to photocopy and retain the driver's licences by section 14 of PIPA. I find that there is nothing in section 14 that would confer this authority.

Issue B: Did the Organization collect the Complainants' personal information contrary to, or in compliance with, section 7(1) of PIPA (no collection without either authority or consent)? In particular,

- b. If the Organization did not have the authority to collect the Complainants' personal information without consent, did the Organization obtain the Complainants' consent in accordance with section 8 of the Act before collecting? In particular,**
 - i. Did the individuals consent in writing or orally, or**
 - ii. Are the individuals deemed to have consented by virtue of the conditions in section 8(2)(a) and (b) having been met? or**
 - iii. Is the collection authorized by virtue of the conditions in 8(3)(a), (b) and (c) having been met?**

[para 10] Budget did not argue that the Complainants had consented to the collection and retention of photocopies of their driver's licences within the terms of section 8.

[para 11] Rather, it focused its arguments on its position that requiring the Complainants to give over their driver's licences for photocopying (which the legislation

describes as “requiring consent” but which would in my view be more aptly described as “requiring information”) was necessary for the purposes of providing its service of offering vehicles for rent, within the terms of section 7(2) of PIPA.

[para 12] A review of section 8 reveals that it is speaking to voluntary consent (whereas the present circumstances involve what could at most be described as a “reluctant consent”). In a situation in which a person gives over their information under protest in order to receive the desired product or service, this is not true consent. Rather, the question is whether the organization is permitted by section 7 to require personal information from an individual before it provides the product or service. I will therefore not consider the application of section 8 in this inquiry.

[para 13] However, before leaving this section, I note that, in my view, it is implicit from section 7(2) that if an organization meets the requirements for requiring information to be given over that are set out in that section, the organization will be permitted to collect, use and disclose the information to the extent that doing these things is necessary for providing the product or service. It might be useful to have additional words in the provision that explicitly say this, given the potential for confusion where reluctant (rather than voluntary) consent may be involved.

Issue C: Did the Organization, as a condition of supplying a product or service, require the Complainants to consent to the collection of their personal information beyond what is necessary to provide the product or service, contrary to section 7(2)?

[para 14] Before considering the application of section 7(2) to the facts of this case, I will make some observations about this provision. Section 7(2) was the subject of extensive commentary in the decisions of the Alberta Court of Queen’s Bench and the Alberta Court of Appeal in appeals of the decision of the Adjudicator in Order P2008-004.

[para 15] To explain, all three levels of decision in the Leon’s case discussed whether the collection of information had to be “necessary” or whether it only had to be “reasonable”. The Adjudicator, whose decision was upheld by the Court of Queen’s Bench, thought that section 7(2) requires that the information collection be shown to be “necessary”. In contrast, the Court of Appeal thought that the legislation required that the purpose (in that case of preventing fraud) be necessary, but that the means used to achieve the necessary purpose needed only to be reasonable. The Court said:

If there is a risk of fraud, it is necessary to have policies in place to prevent fraud, and to assist in the detection of those responsible when fraud occurs. So long as those necessary policies are "reasonable" they are unobjectionable. While the adjudicator adopted this definition, she did not accept that the recording of driver's licence numbers was reasonably necessary to prevent fraud.

[para 16] As well, the Leon’s case dealt, at all levels, with the related idea that section 7(2) imports the notion that there must be no less privacy-intrusive means for achieving an organizational goal before the information can be required by the authority of the

provision. The Adjudicator disapproved of the recording of driver's licences because she thought there were means of preventing fraud that did not involve collecting and retaining the licence number information. She also did not see how collecting and retaining the information could help prevent fraud or apprehend fraudsters. The Court of Appeal rejected the idea that only the least privacy-intrusive means for achieving the goal could be sustained; rather, it regarded any reasonable means as acceptable. The Court also regarded the collection and retention of this information as a reasonable way to prevent and detect fraud.

[para 17] In my view, in the context in which the goal to be achieved is to deter or apprehend fraudsters or thieves relative to the goods or services, the necessity test is met where:

1. The goal of preventing or apprehending fraud or theft is necessary in the circumstances, and
2. The collection of the information provides a means that is of significant utility for achieving this goal.

Thus, assuming the goal is reasonable, even if it is the case that there are other means available by which perpetrators could be apprehended which do not involve collection of this information (and thus which do not involve an intrusion on privacy of this type), as long as the information collection provides an important means for finding thieves or deterring them, it is, in my view, "necessary" to collect that information.

[para 18] This point is similar to a conclusion reached in Order F2008-029 in which it was held that "necessary" in the context of section 41(b) of the *Freedom of Information and Protection of Privacy Act* is met where disclosure of information gives law enforcement officers a means of achieving law enforcement objectives that would be unavailable without that disclosure. That order stated:

In the context of section 41(b), I find that "necessary" does not mean "indispensable" - in other words it does not mean that the CPS [the Calgary Police Service] could not possibly perform its duties without disclosing the information. Rather, it is sufficient to meet the test that the disclosure permits the CPS a means by which they may achieve their objectives of preserving the peace and enforcing the law that would be unavailable without it. If the CPS was unable to convey this information, the [domestic violence] caseworkers would be less effective in taking measures that would help to bring about the desired goals. Because such disclosures enable the caseworkers to achieve the same goals as the CPS has under its statutory mandate, the disclosure of the information by the CPS also meets the first part of the test under section 41(b).

[para 19] Thus, even if the appropriate test for collecting the information is that collection is necessary for achieving the goal, in my view, the test of *necessity* is met where the collection is reasonable *in the sense that* it provides an important and effective method for achieving the goal.

[para 20] Similarly, while I believe the “no less privacy intrusive means available” test is useful in some contexts, I do not believe it applies to the comparison of law enforcement mechanisms each of which is effective. If one mechanism can reasonably be expected to be effective in a given case, it is not necessary to examine whether other means of law enforcement exist which might, depending on unknown future variables or circumstances, also be effective. If, for example, the possession by law enforcement officials of the facial image of a thief allows them to employ measures that are a significant means for locating such persons, the requirement of “necessity” is satisfied, in my view, even though there is a possibility that such a person could be apprehended through other means.

[para 21] In saying this, I recognize that it is not only thieves but all persons renting vehicles that are required to give photocopies of their driver’s licences. In my view, to justify the infringement of privacy of many for the sake of apprehending only the few, it is necessary to determine not only whether the means for achieving the goal is likely to be significantly effective, but, as already stated above, also whether the goal is a *necessary* one in the circumstances. All levels of decision makers in the Leon’s case agreed that this is one of the components of the test.

[para 22] I turn to applying these tests to the present case. First, is it necessary for car rental companies to put in place measures that deter or help to apprehend persons who would steal or have stolen the cars they have rented? Second, is collection of the images on driver’s licences a measure that is of significant utility for achieving these goals?

Submissions of the Respondent Organization Budget

[para 23] Throughout its submissions, the Organization (Budget) made the following statements with respect to the nature and extent of the problem of car theft from rental agencies by the use of fraudulent identification:

- We received a recommendation by the Calgary Police Services many years ago due to the amount of fraud involved within the car rental industry. Similar to other leasing businesses (i.e. movie rentals, car dealerships)
- Car rental agencies are targeted more so than other retail stores for criminal acts (statement attributed to Patrick Thomas, a 25 year member of the CPS and now a private investigator)
- Addendum D, BRAC [Budget Rent-a-Car] Calgary recovered vehicles, which has all the vehicles reported stolen and recovered from 2007 until year to date 2011. This spreadsheet clearly displays in missing units over the years, specifically 23 in 2007, 24 in 2008, 8 in 2009, 6 in 2010, and 10 in 2011.
- ... identity theft victimization has become a major challenge for society and Law Enforcement today. The methods used and the quality of the end product has become more increasingly sophisticated and will easily deceive the average citizen and employee. (from the Affidavit of Mr. Thomas, who averred that he had “conducted numbers of investigations in relation to the thefts of Budget vehicles”)

As well, Budget explained that a given successful instance of car theft is very costly:

- This procedure exists because our customers are taking assets that are worth thousands of dollars and more detail is explained below. ...
- This policy is used to protect our customers from the fraudulent use of their identification and to protect our vehicle assets that cost from \$30,000 - \$150,000
- The car rental industry is a lease arrangement, whereby assets that are worth thousands of dollars and carrying millions of dollars of third party liability, requires more stringent controls and deterrents to safeguard from fraud. ...

[para 24] Budget made the following submissions to demonstrate that the practice of photocopying and retaining drivers' licenses for the duration of a car rental contract helps to apprehend fraudsters or deter them:

- Since the implementation of this policy, the amount of vehicles reported stolen and used for illegitimate purposes (i.e. Drug trafficking, prostitution) has declined drastically.
- When these instances do occur, the ability to provide the authorities with photocopied documents increases our chances to recover our vehicles. ...
- This procedure is used to protect our renters and organization from fraudulent acts.
- Photocopying and retaining driver's licenses is an integral part of physically identifying, deterring and apprehending culprits involved with these criminal activities. (statement attributed to Patrick Thomas, a 25 year member of the CPS and now a private investigator).
- Budget has seen a significant decline in missing vehicles since this policy was implemented on November 26, 2007. Please find attached Addendum C, BRAC [Budget Rent-a-Car] Calgary Missing Vehicles, which is an up-to-date list of missing vehicles at our organization. The report states that there is only one vehicle that we have not recovered since 2006.
- As explained by Patrick Thomas in Addendum B, when investigating a fraudulent incident, providing the authorities a copy of the driver's license used at the time of rental is an important reference to verify that any fraud, including manipulation to the driver's license, did not occur.
- Car Rental Agencies have no tools at their disposal to verify the authenticity of the presented driver's license and credit card for a car rental. (from the Affidavit of Mr. Thomas)
- Many other car rental agencies, within Canada and the United States of America, follow the same industry practices to prevent fraud.
- If the card is valid and the Rental Agency is a victim of theft or Fraud, the Police will be able to use that information to identify the perpetrator and bring some resolution by way of criminal charges; and the Rental Agency can take the necessary steps to recover their losses. (from the Affidavit of Mr. Thomas).
- ... more than often, the culprits victimizing the Car Rental Agencies present counterfeit licenses with invalid DL numbers or valid DL numbers with fictitious

information. This will be of no assistance in identifying the persons responsible for the theft. The only reliable constant is the picture on the driver's licenses as this is verified by the rental agent at the time of the rental (from the Affidavit of Mr. Thomas).

- Photocopying the driver's license is invaluable as a deterrent and in providing clues to Law Enforcement toward the apprehension of suspects, and in the protection and recovery of the Car Rental Agency's rental assets (from the Affidavit of Mr. Thomas).
- The retention of photo identification is a necessary policy to ensure we have the ability to follow up with fraudulent rentals when they occur.

[para 25] As I regarded the foregoing information as insufficiently conclusive to reach a decision, I wrote to Budget to ask some specific questions, as follows:

In order to reach my conclusion as to whether the practice of the Organization of photocopying driver's licences is in compliance with PIPA, I must decide two questions:

1. Is it necessary for car rental companies to put in place measures that deter or help to apprehend persons who would steal or have stolen the cars they have rented? In other words, are thefts of this nature a problem for car rental companies, and if so, how significant a problem is it?
2. Is collection of the images on driver's licences a measure that is of significant utility for achieving these goals?

To help me make these decisions, I have the following questions, arising from your submissions:

1. Is theft by persons who are ostensibly renting a car, but who steal it instead, a problem for your company or for other car rental companies? Are you (or Mr. Thomas) personally aware of any such cases and/or is it a common occurrence? Have any such thefts occurred in your particular Calgary-based franchise? If the answers are yes, can you provide evidence to substantiate these points?
2. Further in this regard, do the statistics you provided with regard to "missing vehicles", or vehicles that were "reported stolen and recovered", relate to vehicles that were stolen by fraudulent "customers" of the company, or were they also (or instead) vehicles that were stolen by thieves from customers after they had been legitimately rented by customers?
3. Do any of the statistics relate to vehicles that were "missing" for reasons other than that they were stolen?
4. If the statistics include vehicles that were stolen *from* customers rather than *by* them, what is the proportion of each kind of theft?

5. Are you (or Mr. Thomas) aware of any instances in which a fraudulent “customer” was apprehended, or a stolen vehicle recovered, because of, or with the assistance of, an image on a photocopied driver’s licence? If so, how did the driver’s licence copy help to locate the suspect and/or the vehicle?
6. Are you (or Mr. Thomas) aware of any situations in which a photocopied driver’s licence image was provided to an investigator or law enforcement officer for the purpose of helping to apprehend a thief or recover a vehicle?

Budget’s response to these questions included the following additional points:

Question 1:

Budget stated that on January 26, 2012, operators of the major car rental companies in Calgary attended a meeting chaired by two constables of the Calgary Criminal Intelligence Unit to discuss the problem of vehicle theft from car rental agencies. The issue of car rental fraud and its known involvement with the facilitation of organized crime was raised. As confirmed by an attached statement from Staff Sergeant Steven Drennan, there is an emerging trend whereby stolen rental cars are being rented with fraudulent identifications and credit cards. At the time, there were over 30 units from various rental companies that had been targeted by these organizations [possibly referring to organized crime]. Budget did not have any known missing units in this investigation (“due to [their] strict policies”).

Staff Sergeant Drennan’s supporting statement added the information that in 2011, there were 3000 vehicles reported stolen in Calgary, 110 of them were from car rental agencies, and of these 110, 28 were from Budget. He did not indicate what proportion of these thefts was by means of fraudulent identification.

Staff Sergeant Drennan also stated that in December, 2011, an emerging trend was noticed whereby stolen rental cars were rented with fraudulent identification and credit cards. The vehicles were assigned and registered with a new VIN number, sold, and re-registered to a new owner, and that in some cases, the car rental agencies were not initially aware that the vehicles had been stolen and dealt with in this manner. There was then-current an investigation relating to approximately 30 vehicles stolen from airport rental agencies that had gone through this process. [It is not clear over which time period these 30 vehicles were stolen, or whether the process they had “gone through” included not only the assignment of a new VIN and re-registration, but also that they had been stolen through the use of fraudulent identification.¹]

Questions 2 and 3:

¹ My comment.

Budget stated that BRAC [Budget Rent-a-Car] Calgary Missing Vehicle Report reveals that from 2010 until February, 2012, 14 vehicles were stolen by customers [it is not clear whether any or all of these customers presented fraudulent id's²] and 2 vehicles were stolen from customers. [This statistic did not align with Staff Sergeant Drennan's assertion that 28 vehicles had been stolen from Budget in Calgary in 2011.³]

Question 5:

Budget said that it has recovered vehicles because of having photocopied and retained driver's licences. The driver's licence copy allowed them to determine when an overdue vehicle was fraudulently rented and to assist the CPS with other aspects of the investigation. If an overdue renter cannot be reached by phone the contract is reported to the CPS, and known criminals can be identified by their photo identification. Steps can then be taken to recover the vehicle, and police are made aware of known criminal activity as early as possible, which facilitates the investigation, also of any crime for which the stolen vehicle is being used. [I note that the ability to determine that a given overdue vehicle has been stolen is not dependent on having a copy of the driver's licence, it is dependent on having a phone number to call, and possibly also on having a licence number that, when searched through the motor vehicle database, does not disclose a valid operator's identification.⁴]

Question 6:

Budget said that over the years it has often provided the photocopied id to the CPS, but due to the sensitive nature of police investigations, it does not know many of the details of the disposition of the cases.

Budget pointed to a single instance of a customer who had rented a car in Calgary and attempted to sell it to a dealer in Red Deer. As the vehicle was registered to Budget, the dealership notified Budget. The customer fled, leaving the vehicle. The investigating police obtained the contract and photocopied licence, and the suspect was identified and arrested. [It is not clear from this story that the driver's licence was fraudulent, or that the photocopied licence helped to apprehend the suspect, and if so, how it helped. I note in this regard that where a licence is genuine, the information on it can be obtained from the motor vehicle database as long as the number has been recorded.⁵]

[para 26] At the conclusion of my review of the arguments and evidence put forward by the respondent organization (Budget), I was not satisfied that the photocopying of driver's licences could be said to meet the tests relating to section 7(2) set out above.

² My comment.

³ My comment

⁴ My comment.

⁵ My comment.

[para 27] I had noted that photocopying legitimate driver's licences is not necessary if the licence number is recorded, as the information on the licence can be obtained from the motor vehicle database. Thus photocopying can be significant only with respect to fraudulent licences. Further, because of the availability of the remaining information, deterrence of people who have only genuine licences is achieved simply by writing down the number.

[para 28] Budget had also not demonstrated to me that a significant number of the cases of car theft from its own business or from the industry more generally were carried out through the use of fraudulent driver's licences. While it spoke of "emerging trends" that were identified in meetings and communications with police officers, it did not provide any evidence to support the existence of these trends.

[para 29] As to how the practice of photocopying could achieve the goal of prevention of fraud, Budget argued that the practice had operated as a deterrent, on the basis that the incidence of such thefts had gone down in recent years. However, it did not comment as to whether there were other factors that could have led to these perceived reductions.

[para 30] With regard to apprehending thieves, Budget claimed, without explanation as to how this could happen, that the photocopied licences helped to identify the thief or recover the vehicle. Its point that the photocopy was necessary to permit early awareness that a rental had been fraudulent is, again, controverted by the fact that simply calling the renter by telephone would achieve this same objective.

[para 31] I remained uncertain as to the potential for deterrence of fraudsters since I did not know whether fraudulent driver's licences used for the purpose of theft would have an actual photo of the thief. I also did not know whether a photocopy of the driver's image from the licence could be used to check against databanks of images of known criminals.

[para 32] As noted earlier, I therefore decided to ask for the participation of additional parties who might be able to provide fuller answers to my questions. I invited and received submissions from the Calgary Police Service, the Associated Canadian Car Rental Operators, Avis Budget Group, and Discount Car and Truck Rentals.

The Calgary Police Service's submissions

[para 33] I asked the CPS a number of questions, to which it responded way of an affidavit of Staff Sergeant Drennan, who has five years of experience in the Organized Crime Section, including experience with cases involving fraudulent identification and auto theft. The staff sergeant also discussed the questions with detectives in the Auto Theft and Fraud units. The key questions and his answers in relation to the prevalence of rental theft by the use of fraudulent identification, and the usefulness of photocopies of such identification to prevent theft or apprehend perpetrators, or a summary thereof, were as follows:

Question: Are automobiles commonly stolen from car rental agencies by means of the presentation of fraudulent driver's licences? If yes, how common a problem is it? How many such cases does the CPS investigate annually? How many such cases has it investigated in the past five years?

Answer: The most common type of theft is from failure to return the vehicle by the renter not from the use of fraudulent identification. Statistically, it is not a common problem but has been identified as a new trend in the theft of automobiles. ... the reporting system does not have the required search parameter ... anecdotally ... the number will be low.

Question: In cases of theft by this means, is it useful for investigation purposes for the police to have a copy of the fraudulent driver's licence used by the perpetrator? (Please take into account that some of the information from a driver's licence also appears on the rental contract.)

Answer: In any criminal investigation involving fraudulent ID, a copy of the fraudulent ID ... is very helpful. (The staff sergeant also commented that the quality of fraudulent ID is such that it would be difficult to differentiate it from legitimate ID, and the pictures are generally clear enough to utilize facial recognition software. However, I believe this reference was to actual (seized) ID rather than to a copy thereof.)

- a. If yes, *which features* of the information on the fraudulent drivers' licence photocopy would be useful, and how would it be useful?

Answer: The photo verification is key to determining who actually rented the vehicle. ... [it is] the only true information on the drivers' licence. *If scanned or copied with a high quality photo copier⁶*, it can be subjected to facial recognition analysis.

- b. Are members aware of any actual instances in which such information has proven useful for the purpose of identifying or apprehending a perpetrator, and how was it useful?

Answer: In the active investigation referred to earlier, a suspect was identified using the photocopied drivers' licence.⁷

- c. Could a *photocopy* of a driver's licence be used by facial recognition software to conclusively establish the identity of a perpetrator?

Answer: If the photocopy is of good quality, it could be used to identify the actual person using facial recognition software.

- d. Do fraudulent driver's licences typically use an *actual photo* of the person who uses the licence fraudulently?

Answer: Yes, fraudulent driver's licences use stolen identities and attach that information to the photo of the person who is using the licence.

- e. Is there any other mechanism for identifying a thief from the photocopy of a picture (ostensibly of that person) on a fraudulent driver's licence; if yes, is there any evidence that this technique has been successfully used to identify perpetrators of theft from car rental companies by the use of fraudulent id?

⁶ My emphasis

⁷ This answer does not indicate whether the licence was fraudulent, and whether the photo was the identifying element, but the answer given to a question on the following page indicates that this was the case.

Answer: Photos are circulated throughout agencies in hopes that other investigators will recognize the photograph. .. not aware of a positive identification through these means specifically in regards to fraudulent automobile rental.

Question in relation to the statement already given by Staff Serg. Drennan:

Did a photocopy of the fraudulent driver's licence help the police to track down any of these vehicles? If yes, how did it help?

Answer: Yes, investigators were able to use the photocopy provided to identify the person who was renting the vehicles fraudulently through facial recognition software. This led to the recovery of at least one vehicle.

Question: Are there any ways in which photocopying driver's licences could prevent car theft from rental companies? (Deterrence is a factor to the extent that the image on the licence is that of the thief or resembles that person, and thieves would not wish to hand over such photos – at least if they are actually of themselves; are there any other factors that might come into play?)

Answer: The photocopy would be a deterrent ... because the person is clearly identified on the driver's licence, but in the use of fraudulent identification cases, the suspect is insulated because his true identity is not displayed.⁸

Question: Is any evidence available that the practice of photocopying driver's licences has reduced thefts by way of fraudulent identification from the rental companies that have adopted this practice?

Answer: No study or statistic available.

[para 34] Based on this information provided by the CPS, I can conclude that:

- only a small proportion of car thefts from car rental agencies are accomplished through the use of fraudulent identification; however, there is an “increasing trend”
- photocopies of driver's licences can be effectively used in facial recognition software only if the licence photo is either scanned, or copied by a high-quality colour photocopier
- fraudulent driver's licences use the actual image of the fraudster [but this does not indicate that the image is clear or accurate enough to identify the fraudster]
- though the answers drew on the combined experience of Staff Sergeant Drennan and the detectives in the Fraud and Auto Theft Units over the course of several years, there was reference to only a single case in which the photocopy of the image of a fraudulent thief was successfully used to identify that person through facial recognition software.

⁸ I note that the photocopying of genuine licences is not required for deterrence, since the recording the number alone (which is not challenged as a practice in this case) serves the purpose of identifying the person (through the motor vehicles database).

[para 35] I also asked the CPS to provide information about the concerns of the Complainants in this case – that the information they were required to provide to be photocopied could be used for stealing their identities. I asked:

How would a photocopy of a genuine driver’s licence potentially provide information useful for identity theft?

In asking this last question I note, again, that the names of vehicle renters, and their signatures, appear on the rental contract, and the practice of writing down their licence numbers, to be retained until the car is returned, is not in dispute. Thus the question is whether the *additional* information that appears on copies of genuine driver’s licences provides significant additional information to identity thieves.

[para 36] The staff sergeant responded, in part, as follows:

This is a genuine concern of the complainants and is shared by the writer. The degree to which a person’s identity is compromised is directly related to the amount of information available to the fraudster perpetrating the crime. Information contained on the photocopy of a driver’s licence is sufficient to make a fraudulent piece of identification. ...

This was evident in a recent fraud investigation, involving stolen identities and credit card manufacturing. During this investigation digital images of 2500 pieces of fraudulent photo identification was recovered. It was learned that the fraudster provided different levels of false identification for purchase. On the low end one could simply purchase a fraudulent driver’s licence containing the buyer’s photo. On the high end one could purchase a driver’s licence backstopped with Social Insurance Cards and credit cards. The latter would seriously compromise the innocent person’s identity and credit.

It is also evident that it is not just car rental agencies that engage in the practice of photocopying driver’s licences. In another major fraud investigation, CPS detectives discovered a box during a search warrant that contained photocopied driver’s licences which were apparently taken from an automotive dealership. This information was being used or was about to be used to manufacture fraudulent identification. ...
It is the writer’s view that while the photocopy of a driver’s licence does help in any ensuing investigation regarding thefts of rental vehicles, care and protection of the personal information is also of paramount importance in preventing the theft of identities. There must be sufficient safeguards in place to protect this information.

[para 37] This aspect of the staff sergeant’s evidence highlights the need to balance the photocopying of driver’s licences to address concerns about fraudulent auto theft with the potential that the same information has to compromise the identity of car rental customers.

The submissions of the other car rental companies

[para 38] I asked the car rental companies the following questions:

1. Are automobiles commonly stolen from car rental agencies *by means of the presentation of fraudulent driver’s licences?*

- a. If yes, how common a problem is it?
 - b. How many vehicles have been stolen from your company in this manner in the past year? In the past 5 years?
 - c. What proportion of vehicles that are rented from your rental company are stolen in this manner (that is, how many vehicles were rented by your company during that period, and of these, how many were stolen in this way?)
2. In cases of theft by this means, is it useful for investigation purposes for the rental company to have a copy of the fraudulent driver's licence used by the perpetrator? (Please take into account that some of the information from a driver's licence also appears on the rental contract.)
- a. If yes, *which features* of the information *on the fraudulent drivers' licence photocopy* would be useful, and how would it be useful?
 - b. Are you aware of any actual instances in which such information has proven useful for the purpose of identifying or apprehending a perpetrator, or convicting a perpetrator after charges had been laid; if yes, exactly how was it useful?
 - c. Do fraudulent driver's licences typically use an *actual photo* of the person who uses the licence fraudulently?
3. Are there any ways in which photocopying driver's licences could *prevent* car theft from rental companies?
Deterrence is a factor to the extent that the image on the licence is that of the thief or resembles that person, and thieves would not wish to hand over such photos – at least if they are actually of themselves; are there any *other* factors that might come into play?)
4. Is any evidence available that the practice of photocopying driver's licences has reduced thefts by way of fraudulent identification from the rental companies that have adopted this practice?
5. If the purpose of the photocopying is the image of the thief, are there any other means presently being used by your company or other companies to collect and retain that image (e.g. cctv cameras)?

[para 39] The Associated Canadian Car Rental Operators ACCRO) stated that in addition to the major vehicle rental companies (Avis Budget Group Inc., Discount Canada, Dollar Thrifty Automotive Group, Enterprise Holdings Inc, (Enterprise National, Alamo) and Hertz Canada) it also represents over 200 independent Canadian operators.

[para 40] ACCRO said that it had asked their corporate members if they currently have or had in the past any corporation-wide policies that would dictate the need to photocopy a Renter's Driver's licence. It stated that all the corporations that responded to this information request indicated that they do not currently have any corporate policies that involve photocopying a renter's driver's licence.

[para 41] ACCRO did provide a reason that independent car rental operators may have for photocopying driver's licences which is unrelated to preventing or apprehending

perpetrators of fraud. This is that some insurers do not cover losses for vehicles stolen by conversion, but do cover losses stolen via fraud. A copy of a fraudulent driver's licence is often the evidence required for local police to report the theft as fraud, thereby giving rise to the insurance coverage. However, as this is a reason for photocopying driver's licences that has not been raised by the parties in this matter, it is not one which I can consider.

[para 42] ACCRO also noted that vehicle theft is a greater concern for small independent operators than it is for large companies with far larger fleets for whom occasional thefts are proportionately less economically significant.

[para 43] The response of Avis Budget Group (ABG) was that theft of vehicles through the use of fraudulent identification does occur at both their corporate and franchised locations, that the number of vehicles stolen is small relative to the size of the fleet, but that each theft represents a significant loss. However, ABG said that it does not photocopy the driver's licences of its customers. Rather, it uses the licence to help confirm the identity of the renter, and keys the driver's licence number into its secure electronic rental system. It also stated that it has been advised by some law enforcement officials that a copy of a driver's licence would assist in investigation – specifically the photograph as well as the physical description and date of birth, but it did not tie this to fraudulent licences in particular. (It is noted that for genuine driver's licences, the number alone will yield the remaining information through the motor vehicle database.)

[para 44] AGB also stated its view that the deterrent effect of copying licences would be an important preventative for car theft, but stated it had no evidence to this effect as it did not engage in the practice. Finally, it stated that some of its locations use security cameras, and as well that it is aware of systems for the capture and secure storage of the image of a driver's licence but does not use such a system at the present time.

[para 45] The final intervenor that had been invited to respond was Discount Car and Truck Rentals. This company affirmed that units are stolen 1.5 times a month on a 12-month average, that photo ID and address information is critical, especially for out-of-city renters, and that renters have been deterred when they have asked to take a "copy of the card" (this statement may also be meant to also refer to a copy of the driver's licence). As well, the company stated that since collecting copies of driver's licences for out-of-town renters, the average number of thefts dropped from 3.4 per month to 1.5 per month. (It is not clear from this assertion what is being suggested as to how this reduction resulted. That is, it is not clear whether the idea is that people who would have rented cars using fraudulent identification were deterred from renting the cars at all, or that people who would not have returned the cars were deterred because the company had a copy of their genuine driver's licence. It is noted, again, that the latter purpose is as well served simply by copying the driver's licence number).

The Complainants' submissions

[para 46] Many of the questions which I asked of the parties as described above were based on the submissions of the Complainants. Basically, they questioned whether the

rental company needed to do more than collect their names and drivers' licence numbers, and to view their licences to confirm they were the people renting the vehicles. They stated their views that the respondent Budget had failed to demonstrate the degree to which theft from car rental agencies through fraud was a problem, whether photocopying of licences could prevent such a problem or assist with apprehension, and whether even if some occasions in which this had happened could be shown, this could be said to be reasonable in view of the potential for compromising the identities of customers.

In their rebuttal submission, the Complainants also set out information, including material from "the RCMP website", which demonstrates that the kind of information that exists on a photocopied driver's licence is highly useful for the creation of false identities. The site also indicates the kinds of harms that can be caused by identity theft, including accessing bank accounts, opening new bank accounts, transferring balances applying for loans and credit cards, making purchases, and obtaining passports and receiving government benefits.

Discussion

[para 47] I must decide how the evidence and arguments set out above answer the two questions I posed:

1. Is it necessary for car rental companies to put in place measures that deter or help to apprehend persons who would steal or have stolen the cars they have rented?
2. Is collection of the images on driver's licences a measure that is of significant utility for achieving these goals?

[para 48] The evidence showed that theft of cars from rental agencies occurs, but that only a small proportion of such thefts happen through the use of fraudulent identification. In other words, the kind of theft which the photocopying of driver's licences is meant to prevent or resolve (in contrast to theft by simply not returning the vehicle or by stealing it from the rental lot) is a relatively small proportion of the overall theft problem. The parties also told me that theft of any kind is a more serious problem in economic terms for small operators.

[para 49] My answer to the first question is that, as it is necessary for car rental agencies to try to prevent theft by whatever means are used to effect it, it is necessary for them to put into place any available measures that are of significant utility for preventing theft by fraud and for being able to assist in apprehending thieves who used fraudulent identification. I have noted the arguments of some of the parties that theft should simply be treated as part of the cost of doing business, but I do not agree that this suggests that rental companies should not take steps to deal with theft. In addition, the economic burden of the loss is a consideration which may be more significant for smaller operators.

[para 50] I turn to the second question. As I have noted several times above, writing down a driver's licence number enables the police to quickly and readily obtain all the other information on the driver's licence, and operates as an important deterrent to people

who have only legitimate licences. The Complainants in this case did not object to this practice.

[para 51] As to copying fraudulent licences, some of the parties speculated about photocopying such licences as a deterrent measure, and suggested a correlation between their use of photocopying and a decline in thefts. However, no meaningful statistics were presented to me. The evidence as to the declines in numbers of thefts did not comment on or eliminate other possible causes. Thus there is no conclusive evidence to show that the practice of photocopying licences deters people from using fraudulent identification to steal cars.

[para 52] Possibly it seems like common sense that there would be a deterrent effect. On the other hand, it seems likely that if thieves go to the trouble of creating or purchasing false identification for the purpose of stealing cars from rental agencies, they would also create identification that would make them unidentifiable, as by using a photo which would not necessarily identify them, or by altering a photo in such a manner as to make it unusable to identify them using facial recognition software. In other words, it is by no means clear that when cars are stolen by the use of fraudulent identification, the photo on the fraudulent identification would necessarily locate or identify the thief.

[para 53] Furthermore, even if the image on the driver's licence was such as would identify the fraudster, as the staff sergeant indicated, it would be necessary to have either a scanned image of the photo on the licence, or a high-quality colour photocopy, before facial recognition software could be employed to try to locate the thief. I have no evidence in the present case as to the quality of the photocopies that were being made. Thus it seems possible that at most, such photocopied images might be usable to eliminate particular suspects, rather than to locate the perpetrator. As well, Budget did not positively assert that its own photocopies had been used to apprehend fraudsters in particular cases.

[para 54] Moreover, the evidence of the Staff Sergeant Drennan made reference to only a single instance in which a photocopy of a fraudulent driver's licence led to the identification of a thief. Though the staff sergeant provided his opinion that photocopying driver's licences helps in ensuing investigations, it is not clear to me, given his experience, that this opinion would be well-founded relative to making photocopies of *fraudulent* driver's licences. Given the rarity of the circumstances in which such information has, in the staff sergeant's experience, actually been useful, he may have been referring to the utility for investigative purposes of the information in driver's licences generally, rather than to photocopies of the image of fraudulent renters. Possibly, as noted, the image would be of use in eliminating some suspects (including a person whose identity had been stolen and whose name appeared on the licence). Readily eliminating innocent people might be helpful, but it does not catch the thief. As well, the staff sergeant made no reference to this possibility or to cases in which this had happened in the car theft context. In my view, the evidence given by the staff sergeant does not support the conclusion that photocopying driver's licences (which can have investigative significance only in relation to fraudulent licences since genuine ones can readily be

reviewed using a motor vehicle database) is a measure that is of significant utility for combatting car rental fraud.

[para 55] The other significant item of evidence is that of the practice of the intervenor car rental agencies in this case. As noted above, though these respondents indicated that car theft from rental agencies is carried out through the use of fraudulent identification, the vast majority of them said that they do not engage in the practice of photocopying car renters' licences. While some of them speculated that the practice might have some utility, they were not able to provide any meaningful evidence about this. It is hard to see how a practice can be regarded as "necessary" when most organizations in the same business do not engage in it. Even if the considerations are somewhat different for smaller independent operators, there still is very little evidence that it has significant utility for its ostensible purpose.

[para 56] As already noted, the evidence of the respondent organization Budget was too general and factually insubstantive to be conclusive with respect to my questions.

[para 57] On the basis of all the arguments and evidence before me, I cannot conclude that the practice of photocopying customers' driver's licences is a measure of significant utility for apprehending or deterring people who steal cars by using fraudulent identification. It is not necessary, as discussed above, to photocopy genuine driver's licences as long as the number is recorded. I find, therefore, that the requirements of section 7(2) – that requiring a driver's licence for the purpose of photocopying it be necessary for providing the service of renting cars – was not met for this case. Consequently, in my view, section 7(2) prohibits the practice in this case.

Issue D: Did the Organization collect the Complainants' information contrary to, or in accordance with, sections 11(1) of PIPA (collection for purposes that are reasonable)?

[para 58] Section 11(1) provides:

11(1) An organization may collect personal information only for purposes that are reasonable.

[para 59] As I have already found that section 7(2) prohibits the copying of driver's licences in this case, it is not strictly necessary for me to consider whether this was done for a reasonable purpose within the terms of section 11(1).

[para 60] However, as I have already found that the purpose of preventing theft by fraud and apprehending fraudsters is a necessary goal for rental operators, it follows that I find that the purpose of addressing car theft from rental agencies by fraud is a reasonable purpose.

Issue E: Did the Organization collect the Complainants' personal information contrary to, or in accordance with, sections 11(2) of PIPA (collection to the extent reasonable for meeting the purposes)?

[para 61] Section 11(2) provides:

11(2) Where an organization collects personal information, it may do so only to the extent that is reasonable for meeting the purposes for which the information is collected.

[para 62] As I have already found that section 7(2) prohibits the copying of driver's licences in this case, it is also not strictly necessary for me to consider whether this was reasonable for the purpose within the terms of section 11(2).

[para 63] However, the answer is, again, already answered in the foregoing discussion. I cannot, for the reasons given above, conclude on the evidence and arguments before me that photocopying driver's licences is of significant utility in dealing with (preventing and apprehending) car theft by the use of fraudulent identification. Therefore, I cannot conclude that the collection in this case (photocopying) is only to the extent reasonable for meeting the purpose.

[para 64] I note as well that the element of reasonableness under section 11(2) can involve a consideration of whether the importance of the purpose of preventing fraud outweighs the privacy interests of the persons whose information is being collected. In this case, it also involves a consideration of the potentially harmful consequences to such persons should the information so collected be compromised by identity thieves.

[para 65] In regard to the latter consideration, its importance is diminished to the extent that the collected information is secure. However, in this case, the evidence was that the paper rental agreement, which has minimal customer personal information on it, is stored in a locked filing cabinet, and that other personal information is stored on the management computer system, which is password protected, and which cannot access the mainframe computer after hours. Most significantly, however, the photocopied driver's licence is stored together with the rental agreement (presumably this means in the locked filing cabinet) until the termination of the contract (at which time it is returned or shredded). While Budget stated that its track record was "without incident" in terms of abuse of personal information, it gave no further details as to the potential for abuse in terms of who had access to the information before it was so stored, who was responsible for storing the information, who had access to the keys to the filing cabinet, and who would be involved in shredding the copy. Thus it is also not clear to me that the security arrangements adequately protect customers against possible misuse or theft of the stored copied information.

[para 66] Balancing the utility of the copied information to protect against fraud against the potential compromise of this same copied information, I cannot, in this case, eliminate the latter as a concern that weighs heavily against finding the practice was

reasonable for the purpose. Thus I find that it is not reasonable within the terms of section 11(2) on this account as well.

Issue F: Did the Organization collect the Complainants' personal information contrary to, or in accordance with, section 13 of PIPA? In particular, was it required to provide, and did it provide, notification, before or at the time of collecting the information, in accordance with section 13 of PIPA?

[para 67] Section 13 of PIPA provides:

13(1) Before or at the time of collecting personal information about an individual from the individual, an organization must notify that individual in writing or orally

(a) as to the purposes for which the information is collected, and

(b) of the name or position name or title of a person who is able to answer on behalf of the organization the individual's questions about the collection.

[para 68] The Complainants stated that they were told, when they asked about the purpose of the photocopies, only that this was "Budget policy". Budget provided no evidence to contradict this. In my view, this response did not meet the requirements of section 13.⁹

Issue G: Did the Organization comply with section 34 of the Act (reasonable security arrangements)?

[para 69] Section 34 provides:

34 An organization must protect personal information that is in its custody or under its control by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure, copying, modification, disposal or destruction.

[para 70] For the reasons given at para 65, I cannot find that Budget made reasonable security arrangements within the terms of section 34.

Issue H: Did the Organization retain the Complainants' personal information contrary to, or in accordance with, section 35 of PIPA?

[para 71] Section 35(1) provides:

35(1) An organization may retain personal information only for as long as the organization reasonably requires the personal information for legal or business purposes.

⁹ Section 13 does not apply when deemed consent is given under section 8(2). However, as I find the collection was not reasonable for the purpose, it would not be reasonable to provide that information within the terms of section 8(2), and it was not voluntarily provided in any case.

[para 72] As I have found that the copying of the personal information was not permissible, it follows that the organization was not permitted to retain it.

V. ORDER

[para 73] I make this Order under section 52 of the Act.

[para 74] I find that in photocopying the driver's licences of the Complainants in this case, Budget contravened section 7(2), section 11(2), section 13, and section 35(1) of the Act. As well, I cannot find that it complied with section 34.

[para 75] I order Budget to cease copying the Complainants' driver's licences, and to destroy any such information currently in its possession.

[para 76] I further order Budget to notify me and the Complainants in writing, within 50 days of its receipt of a copy of this Order, that it has complied with my Order.

Christina Gauk, Ph.D.
Director of Adjudication