

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER P2013-01

April 18, 2013

PROFESSIONAL DRIVERS BUREAU OF CANADA INC.

Case File Number P1884

Office URL: www.oipc.ab.ca

Summary: A truck driver (the Complainant) requested her personal information from the Professional Drivers Bureau of Canada Inc. (the Organization). The Organization is a company that gathers information about truck drivers from their employers, and then makes this information available by subscription to its clients, which include other employers or prospective employers of truck drivers. Once the Complainant received her personal information, she requested that the Commissioner review the Organization's response to her. The Complainant also made a complaint regarding the Organization's collection, use, and disclosure of her personal information.

The Commissioner assigned an Adjudicator to conduct an inquiry. The Adjudicator determined that the evidence did not establish that the Organization had completed a reasonable search for responsive records. She also found that the Organization had collected, used, and disclosed the personal information of the Complainant in contravention of the *Personal Information Protection Act* (PIPA), as it had not obtained her consent in circumstances where it was necessary that it do so, and had not provided notice of its collection. The Adjudicator also found that the Organization had not established that it had collected, used, or disclosed the Complainant's personal information only for reasonable purposes. She also found that the Organization had not established that it had collected, used, and disclosed only the personal information necessary for meeting its purposes.

The Adjudicator ordered the Organization to conduct a new search for responsive records and to provide an explanation of its search to the Complainant. She also ordered the

Organization to cease collecting, using, and disclosing the personal information of the Complainant in contravention of PIPA.

Statutes Cited: AB: *Personal Information Protection Act* S.A. 2003, c. P-6.5 ss. 1, 7, 8, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 24, 27, 28, 29, 33, 52

Authorities Cited: AB: Orders P2008-010, P2012-02

Cases Cited: *Penny Lane Entertainment Group v. Alberta (Information and Privacy Commissioner)*, 2009 ABQB 140; *Leon's Furniture Ltd. v. Alberta (Information and Privacy Commissioner)* [2011] A.J. No. 338;

I. BACKGROUND

[para 1] On November 22, 2010, the Complainant made a request for access to her personal information in the custody and control of the Organization.

[para 2] The Organization did not respond to the Complainant's access request initially, and the Complainant requested that the Commissioner review the Organization's lack of response.

[para 3] On December 19, 2011, the Complainant made a request for an inquiry. This request stated:

[The Organization] has collected personal information, opened a file, is holding and providing "inaccurate information on file / to public, did not have my written / verbal consent to collect or provide information on their file and has not to my belief provided me with a complete file of all information in their control or custody.

[para 4] The Commissioner decided to conduct a written inquiry. The authority to conduct the inquiry was delegated to me. The Complainant made submissions for the inquiry, but the Organization did not make submissions, although it provided what it indicated to be the Complainant's complete file.

[para 5] In a letter dated March 11, 2013, I told the parties that I would consider evidence available in the public domain to decide the issues for inquiry; specifically, I told the parties that I would review the evidence available from the Organization's website.

II. ISSUES

Issue A: Is the access request for the Complainant's personal information?

Issue B: Is the Complainant's personal information in the Organization's custody or control?

Issue C: Did the Organization respond to the Complainant in accordance with section 28(1) of the Act (time limit for responding)?

Issue D: Did the Organization comply with section 27(1)(a) of the Act (duty to assist, including the duty to respond to the access request openly, accurately, and completely, and to conduct an adequate search for responsive records)?

Issue E: Did the Organization comply with section 29 of the Act (contents of response)?

Complaint

Without limiting the Commissioner, the issues in this inquiry in relation to the Complainant's complaint that the Professional Driver's Bureau is not in compliance with PIPA are:

Issue F: Does the Organization collect, use and disclose "personal information" of individuals, (including the Complainant's), within the terms of section 1(1)(k) of PIPA?

Issue G: Does the Organization collect, use and disclose personal information, including the personal information of the Complainant, contrary to, or in compliance with, section 7(1) of PIPA (no collection, use or disclosure without either authorization or consent)? In particular,

a. Does the Organization have the authority to collect, use and disclose personal information without consent, as permitted by sections 14, 17 or 20 of PIPA?

b. If the Organization does not have the authority to collect, use and disclose the information without consent, does the Organization obtain the consent of the individuals whose personal information it is collecting in accordance with section 8 of the Act before collecting, using or disclosing the information? In particular,

- i. Do individuals consent in writing or orally, or**
- ii. Are individuals deemed to have consented by virtue of the conditions in section 8(2)(a) and (b) having been met? or**
- iii. Is collection, use or disclosure permitted by virtue of the conditions in 8(3)(a), (b) and (c) having been met?**

Issue H: Does the Organization collect, use or disclose the information contrary to, or in accordance with, sections 11(1), 16(1) and 19(1) of PIPA (collection, use and disclosure for purposes that are reasonable)?

Issue I: Does the Organization collect, use or disclose personal information contrary to, or in accordance with, sections 11(2), 16(2) and 19(2) of PIPA (collection, use and disclosure to the extent reasonable for meeting the purposes)?

Issue J: Does the Organization collect personal information directly from the individuals who are the subject of the information, including the Complainant?

Issue K: If the Organization collects personal information other than directly from individuals, such as the Complainant, is the collection contrary to, or in accordance with, section 12 (sources for collection)?

Issue L: Does the Organization collect personal information contrary to, or in accordance with, section 13 of PIPA? In particular, is it required to provide, and does it provide, notification, before or at the time of collecting the information, in accordance with section 13 of PIPA?

Issue M: Did the Organization make a reasonable effort to ensure that any personal information about the Complainant which it collected, used, or disclosed is accurate and complete as required by section 33 of the Act (accuracy of information)?

III. DISCUSSION OF ISSUES

Issue A: Is the access request for the Complainant’s personal information?

[para 6] Section 24 of the *Personal Information Protection Act* (PIPA) gives individuals the right to request their personal information in the custody or control of an organization. This provision states, in part:

24(1) An individual may, in accordance with section 26, request an organization

(a) to provide the individual with access to personal information about the individual, or

(b) to provide the individual with information about the use or disclosure of personal information about the individual.

[para 7] “Personal information” under PIPA is defined by section 1(1)(k). This provision states:

1(1) In this Act,

(k) “personal information” means information about an identifiable individual;

[para 8] The Complainant's request was for "all information you have collected on your files about [me]". In other words, the Complainant requested her personal information as defined by PIPA from the Organization.

[para 9] The information the Organization produced in response to the Complainant's request consists of information about the Complainant's employment history, and includes the names of her former employers, the results of her drug tests and the reasons her employment terminated. There is also information about the Complainant's driver's license number, her date of birth, her social insurance number, family status, height, weight, and address and phone number in the records.

[para 10] I find that the Complainant's request was for personal information.

Issue B: Is the Complainant's personal information in the Organization's custody or control?

[para 11] The records produced by the Organization for the inquiry establish that the Complainant's personal information is in its custody.

Issue C: Did the Organization respond to the Complainant in accordance with section 28(1) of the Act (time limit for responding)?

[para 12] Section 28 imposes a duty on organizations to respond to access requests within 45 days of the day the Organization receives the Complainant's access request. It states, in part:

28(1) Subject to this section, an organization must respond to an applicant not later than

(a) 45 days from the day that the organization receives the applicant's written request referred to in section 26, or

(b) the end of an extended time period if the time period is extended under section 31.

(2) An organization is not required to comply with subsection (1)(a) if the time period is extended under section 31.

(2.1) The failure of an organization to respond to a request in accordance with subsection (1) is to be treated as a decision to refuse the request.

[para 13] It appears that the Complainant may have requested review by the Commissioner of the Organization's failure to respond to her access request prior to the expiry of the forty-five day period set out in section 28 of PIPA. However, from the Complainant's correspondence to this office, it appears that the Organization did not

provide her with her personal information until July of 2011. If that is so, then it exceeded the time for responding to an access request.

Issue D: Did the Organization comply with section 27(1)(a) of the Act (duty to assist, including the duty to respond to the access request openly, accurately, and completely, and to conduct an adequate search for responsive records)?

[para 14] Section 27 of PIPA imposes a duty on an organization to assist an Complainant who has made a request for access. This provision states, in part:

27(1) An organization must

(a) make every reasonable effort

(i) to assist applicants, and

(ii) to respond to each applicant as accurately and completely as reasonably possible [...]

[para 15] If the Organization provided a response to the Complainant, it was not provided for the inquiry. Moreover, I have not been told what steps were taken to assist the Complainant, or why the Organization believes that the records it has produced are the only records containing the Complainant's personal information in its custody.

[para 16] Based on the evidence before me, I am unable to find that the Organization complied with its duty under section 27.

Issue E: Did the Organization comply with section 29 of the Act (contents of response)?

[para 17] Section 29 states, in part:

29(1) In a response to a request made under section 24(1)(a), the organization must inform the applicant

(a) as to whether or not the applicant is entitled to or will be given access to all or part of his or her personal information,

(b) if the applicant is entitled to or will be given access, when access will be given, and

(c) if access to all or part of the applicant's personal information is refused,

(i) of the reasons for the refusal and the provision of this Act on which the refusal is based,

(ii) of the name of the person who can answer on behalf of the organization the applicant's questions about the refusal, and

(iii) that the applicant may ask for a review under section 46.

(2) In response to a request made under section 24(1)(b), the organization must

(a) provide the applicant with

(i) information about the purposes for which the personal information has been and is being used by the organization, and

(ii) the names of the persons to whom and circumstances in which the personal information has been and is being disclosed,

or

(b) if the organization refuses to provide the information referred to in clause (a), inform the applicant

(i) of the name of the person who can answer on behalf of the organization the applicant's questions about the refusal, and
(ii) that the applicant may ask for a review under section 46.

[para 18] The Complainant's correspondence with this office dated July 17, 2011 indicates that the Organization sent records to her without an explanation of what they are or a cover page. If that is so, then the Organization did not meet its duty under section 29 of PIPA, beyond the correspondence just noted. The Organization has not provided any submissions for the inquiry. As a result, there are no submissions or evidence that would serve to contradict the Complainant's statements or that would support a finding that the Organization did, in fact, provide a response within the terms of section 29 of PIPA.

[para 19] For these reasons, I find that it has not been established that the Organization met its duty to the Complainant under section 29.

Issue F: Does the Organization collect, use and disclose "personal information" of individuals, (including the Complainant's), within the terms of section 1(1)(k) of PIPA?

[para 20] I have already found that the Complainant's access request is for her personal information, and the information about her appearing in the responsive records, is her personal information within the terms of section 1(1)(k). That the Organization has custody of the records establishes that the Organization has collected and used the Complainant's personal information within the terms of section 1(1)(k). The document entitled Professional Drivers Bureau Driver History Report documents disclosure of the Complainant's personal information.

[para 21] I find that the information that the Organization has collected about the Complainant is not "personal employee information" as defined by section 1(1)(j) of PIPA. This provision states:

1(1) In this Act,

(j) “personal employee information” means, in respect of an individual who is a potential, current or former employee of an organization, personal information reasonably required by the organization for the purposes of

- (i) establishing, managing or terminating an employment or volunteer -work relationship, or*
- (ii) managing a post-employment or post-volunteer-work relationship*

between the organization and the individual, but does not include personal information about the individual that is unrelated to that relationship;

[para 22] The information about the Complainant appearing in the records was originally collected and used by various employers for the purpose of either establishing or managing the employment relationship between these employers and the Complainant. However, there is no employment relationship between the Organization and the Complainant, and so the personal information cannot be said to be reasonably required in order to establish or maintain such a relationship between the Organization and the Complainant. Moreover, there is no evidence in the records the Organization provided for my review that the Organization acted as an agent for these other companies in managing their employment relationships when it collected the Complainant’s personal information. Certainly, the information from the Organization’s website does not suggest that it acts as an employer’s agent in managing employment relationships.

[para 23] If personal information is also personal employee information, then there are circumstances recognized by sections 15, 18, and 21 in which the information may be disclosed without consent. However, as I find that the information collected by the Organization is not personal employee information in this case, these provisions have no application.

Issue G: Does the Organization collect, use and disclose personal information, including the personal information of the Complainant, contrary to, or in compliance with, section 7(1) of PIPA (no collection, use or disclosure without either authorization or consent)? In particular,

- a. Does the Organization have the authority to collect, use and disclose personal information without consent, as permitted by sections 14, 17 or 20 of PIPA?**
- b. If the Organization does not have the authority to collect, use and disclose the information without consent, does the Organization obtain the consent of the individuals whose personal information it is collecting in accordance with section 8 of the Act before collecting, using or disclosing the information? In particular,**

- 1. Do individuals consent in writing or orally, or**

2. Are individuals deemed to have consented by virtue of the conditions in section 8(2)(a) and (b) having been met? or
3. Is collection, use or disclosure permitted by virtue of the conditions in 8(3)(a), (b) and (c) having been met?

[para 24] Section 7(1) of PIPA 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.

[para 25] I find, from the evidence of the records at issue and the evidence contained in the Organization's website, that the Organization has collected, used and disclosed the personal information of the Complainant, in addition to the personal information of other truck drivers.

[para 26] As I noted above, the file of the Complainant's information that the Organization produced for the inquiry contains the Complainant's employment history as recorded by some former employers, including the names of her former employers, the results of drug tests and the reasons her employment terminated. There is also information about the Complainant's driver's license number, her date of birth, her social insurance number, family status, height, weight, and address and phone number.

[para 27] From the Organization's website, I understand that the Organization gathers employment history information about truck drivers and gives access to this information to trucking companies who pay a subscription fee.

[para 28] Under the heading, "About us!" the Organization's website states:

In 1997 Professional Drivers Bureau, a Calgary-based company was launched. Since the beginning the Bureau has kept up with the times, covering all the changes and regulations, while still maintaining Canada's only nation-wide central database with over 160,000 driver work histories on file.

When you're hiring truck drivers, your first goal is to learn as much as you can about the person sitting across the desk from you. Your second is to never forget that it's [their] goal to impress

you, probably by telling you whatever you want to hear. At a time when drivers will work at two, three, maybe even four places in a year, you're in the hot-seat. Due diligence soaks up time, money, and effort you don't have, and – even if you're committed to rigorous screening tests corroborated by reference checks – all you really have to go by is what the driver scribbles down on his job application. Here at the bureau, 60% of the investigations we process for our members reveal the database having information (places of employment, accidents / tickets, failed drug tests,) that the driver omitted on his application – We know with these hard economic times, any additional spending is hard to justify. What we want to point out is... It's not worth trying to save the money by cutting back on safety and compliance. We do not wish to replace your Safety & Compliance or Recruiting Department. We only want to be that “extra” tool your Safety / Recruiting Departments can use.

Mastering the art of reading between the lines can take years of experience, and even the wildest guy with the six-pack gut-check can get fooled. Ask our president and founder [...], who's been working around trucks and truck drivers for the better part of 40+ years.

"I was managing a farm and we had three rollovers with one truck in 10 months," he explains. "And I thought my hiring instincts were pretty good. I figured there had to be a better way for me to know more about the person I was trusting with my equipment and reputation before I hired him." Turns out there wasn't. The provinces do notoriously poor job of exchanging information on driver abstracts, and insurance companies report to the Insurance Bureau of Canada, which for years filed accident records by policy number. Unless you know the company the driver was working for and its policy number, you're out of luck. Besides, most big trucking companies have such high deductibles that accidents aren't reported to the insurance company unless there's an injury.

What we're trying to prevent is the driver who gets into an accident in Texas, gets fired when he returns, and then represents himself to the next guy as clean driver. "How would you know about that accident? Who is going to tell you?" The answer, is the driver's last employer. The bureau credits companies \$4.50 for each termination report they file, since it reduces the administrative hassles of having to chase down missing information and these credits go towards that carrier's invoice. The bureau's database relies on carriers filing a termination report immediately after a driver has left, ensuring that the information is accessible when the driver arrives at his next prospective employer. The report asks the carrier to outline the dates the driver was employed, answer a brief survey about his performance, detail any accidents, injuries, or negligent damage to equipment or cargo, and explain the driver's reason for leaving. There have been questions about the Privacy Act. The bureau operates as an association, which gives it greater legal flexibility to exchange information among its members. It has to have hard copy with the driver's signature on it-typically the company's job application-in order to perform a search. No one outside the bureau staff ever sees an actual termination report, and the database itself is not for sale. When a driver asks to see his file, or to add a letter of explanation or refute, we comply.

Indeed, a driver who has nothing to hide has nothing to fear. "I once spent an hour talking to a guy who said he couldn't get another job because of us," [the head of the Organization] says. "This is a man who said he had no accidents when he filled out his most recent job application. When the employer called us and asked us to do a search, we showed that he in fact had five accidents, one major. I explained to this man that he didn't get hired for two reasons: one, he outright lied, and two, he's got a problem with accidents. Neither had anything to do with us."

Since our launch in 1997 the common factor has always been we are here for the Transportation Industry. Although we cannot guarantee that a driver that is investigated by the bureau will never have an accident. In the unfortunate event of a tragic accident, our 3rd party report will provide evidence that the carrier performed proper due-diligence. Our report gives you an accurate profile on a driver's work history. It is a very important component of the driver file in

the event of a DOT and/or Insurance audit. A Bureau report will help to give you complete knowledge of a driver. This puts you in control of who is representing your company.

[para 29] I conclude from the foregoing, and from the records it included in its response to the Complainant, that the Organization has 160000 files, compiled from personal information that it has collected about truck drivers, which it keeps in paper files and in a database. On the request of a trucking company for personal information about a truck driver, and on payment of a fee, the Organization compiles a report from its files and database and provides the report to the trucking company, which then collects the information for use in making decisions about the truck driver. The report will contain the driver's employment history with employers, the employer's opinions, the employee's driver's license, and birthdate. The Organization collects personal information about truck drivers from trucking companies, uses this information, by creating a file and adding it to its database which it will offer for purchase, and discloses the personal information to clients when they request a report and pay for it.

[para 30] It is not clear from the Organization's website why it describes itself as an "association". I am satisfied, on the evidence before me, which includes the records submitted by the Organization and its website, that the organization is a corporation, and that it is distinct from the organizations that submitted the Complainant's personal information to it. Moreover, I am satisfied that when the Organization obtained the Complainant's personal information, that this was a collection within the terms of PIPA.

[para 31] The records provided in response to the Complainant's access request establish that the Organization has also collected, used, and disclosed the Complainant's personal information. The Organization has records in its custody containing the Complainant's personal information which were clearly obtained from her previous employers or prospective employers. Having reviewed the Organization's business model, as it is presented on its website, and having reviewed the driver history report, and recognizing that the Organization has custody of the Complainant's employment records, I conclude that the Organization put the Complainant's information in a file and entered it into its database where it would become available to subscribing companies who request a report. The driver history report documents five occasions on which the Organization supplied personal information about the Complainant to prospective employers.

Did the Organization obtain the consent of the Complainant to collect, use and disclose her personal information?

[para 32] As I find that the Organization has collected, used, and disclosed the Complainant's personal information, I must now consider whether it did so with her consent, or without it.

[para 33] In her submissions, the Complainant states:

I would like to make it clear to [Professional Drivers Bureau of Canada] on my personal info file that they do not have my consent to hold any files or information about [me]. They are not to collect or take any information from the public, company or employer. They are not to

provide or sell my information [...] to anyone, company or employer, for any reason. They do not have my consent.

[para 34] Section 8 establishes what constitutes consent within the terms of PIPA. This provision states:

8(1) An individual may give his or her consent in writing or orally to the collection, use or disclosure of personal information about the individual.

(2) An individual is deemed to consent to the collection, use or disclosure of personal information about the individual by an organization for a particular purpose if

(a) the individual, without actually giving a consent referred to in subsection (1), voluntarily provides the information to the organization for that purpose, and

(b) it is reasonable that a person would voluntarily provide that information.

(2.1) If an individual consents to the disclosure of personal information about the individual by one organization to another organization for a particular purpose, the individual is deemed to consent to the collection, use or disclosure of the personal information for the particular purpose by that other organization.

(2.2) An individual is deemed to consent to the collection, use or disclosure of personal information about the individual by an organization for the purpose of the individual's enrolment in or coverage under an insurance policy, pension plan or benefit plan or a policy, plan or contract that provides for a similar type of coverage or benefit if the individual

(a) has an interest in or derives a benefit from that policy, plan or contract, and

(b) is not the applicant for the policy, plan or contract.

(3) Notwithstanding section 7(1), an organization may collect, use or disclose personal information about an individual for particular purposes if

(a) the organization

(i) provides the individual with a notice, in a form that the individual can reasonably be expected to understand, that the organization intends to collect, use or disclose personal information about the individual for those purposes, and

(ii) with respect to that notice, gives the individual a reasonable opportunity to decline or object to having his or her personal information collected, used or disclosed for those purposes,

(b) the individual does not, within a reasonable time, give to the organization a response to that notice declining or objecting to the proposed collection, use or disclosure, and

(c) having regard to the level of the sensitivity, if any, of the information in the circumstances, it is reasonable to collect, use or disclose the information as permitted under clauses (a) and (b).

(4) Subsections (2), (2.1), (2.2) and (3) are not to be construed so as to authorize an organization to collect, use or disclose personal information for any purpose other than the particular purposes for which the information was collected.

(5) Consent in writing may be given or otherwise transmitted by electronic means to an organization if the organization receiving that transmittal produces or is able at any time to produce a printed copy or image or a reproduction of the consent in paper form.

The Complainant states that she has not consented to the collection, use, or disclosure of her personal information by the Organization. There is no evidence before me that contradicts that statement.

[para 35] I note that documents entitled “Hiring Standards and Declaration” which were signed by the Complainant at various times, and which form part of her applications to a trucking company, authorize the trucking company “to make such investigations and inquiries of my personal employment, and medical histories in addition to other related matters that could possibly affect my employment with [the trucking company]”. However, this authorization does not extend to the Organization, or authorize the trucking company to disclose the Complainant’s personal information to the Organization so that the Organization could use it for its business or disclose it further. While these documents would authorize the trucking company to contact the Organization to check references, they would not authorize the Organization to collect, use, or disclose the Complainant’s personal information.

[para 36] I also note that there is a document entitled “release clause” among the records supplied by the Organization for the inquiry, which was created following the Complainant’s access request and her complaint. This document is dated March 1, 2012 and is also part of the trucking company’s application. This release clause is signed by the Complainant. It states:

This certifies that this application was completed by me, and that all entries on it and information in it are true and complete to the best of my knowledge. I authorize the Company

and PDB, hereinafter referred to as their agent, to make such investigations and inquiries of my personal, employment, financial (credit bureau), criminal search, driving abstracts, drug results from previous employers or their consortium or their Insurance Carrier or Agent for my driving record, insurance history, medical history, and other related matters as may be necessary in arriving at an employment decision. If hired or contracted, this authorization shall remain on file and shall serve as ongoing authorization to recheck or report as deemed necessary at any time throughout my employment or contract period or after such period. (Generally, inquiries regarding medical history will be made only if and after a conditional offer of employment has been extended.) I hereby release employers, schools, health care providers and other persons from all liability in responding to inquiries and releasing information in connection with my application. In the event of employment, I understand that false or misleading information given in my application or interview(s) may result in discharge. Furthermore, I understand that the Company and / or their agent may keep any information on file including work performance as related to my employment period and make it available to any second party only with my verbal or written consent. I understand, also, that I am required to abide by all rules and regulations of the Company.

[para 37] A handwritten statement written and signed by the Complainant below states: "I authorize [a trucking company] to allow [Professional Drivers Bureau] to do [an] employment reference check for [name of the Complainant]"

[para 38] The foregoing authorizes the Organization to conduct a reference check on behalf of a trucking company. The authorization acknowledges that if the prospective employee is hired, the agent will keep any information on file that was gathered as part of the reference check, and that this information will not be disclosed without the consent of the Complainant. This authorization clearly does not extend to the information collected by the Organization prior to this authorization, which, in this inquiry, is all information collected by the Organization about the Complainant, other than her application to the trucking company of February 29, 2012. The Complainant's authorization does not authorize the Organization to collect, use, or disclose personal information for its own business purposes. Finally, this authorization acknowledges that the Organization is not authorized to disclose personal information obtained as part of the reference check without the consent of the Complainant.

[para 39] I find that the Complainant has not consented to the collection, use, and disclosure of the personal information contained in the records provided by the Organization for use in its business within the terms of section 8 of PIPA. The only consent that appears in the records was signed *after* the Organization collected the Complainant's personal information. Moreover, the consent to allow the Organization to conduct a reference check cannot be interpreted as authorizing the Organization to collect the kinds of information that it has collected, such as the Complainant's driver's license number, her date of birth, her social insurance number, family status, height, weight, and address and phone number. In addition, I find that none of the circumstances set out in section 8 of PIPA, in which an individual may be deemed to have consented to collection, use, or disclosure of her personal information, are present on the facts before me.

[para 40] As I find that the Complainant has not consented to the Organization's collection, use, or disclosure of her personal information for its business, I will now

consider whether sections 14, 17, and 20 of PIPA authorize the Organization to collect, use, or disclose her personal information without consent.

Do sections 14, 17 and 20 of PIPA authorize the Organization to collect, use, or disclose, the Complainant's personal information for its business purposes without her consent?

[para 41] Section 14 of PIPA establishes the circumstances in which an Organization may collect personal information without consent. It states, in part:

14 An organization may collect personal information about an individual without the consent of that individual but only if one or more of the following are applicable [...]

[para 42] None of the circumstances set out in section 14 of PIPA for which consent to collect personal information is not required appears to me to be applicable. Neither party has argued that any of the circumstances set out in section 14 of PIPA authorizes the Organization's collection of the Complainant's personal information for its business purposes without her consent. I therefore find that the Organization was required to obtain the Complainant's consent to collect her personal information.

[para 43] Section 17 of PIPA establishes the circumstances in which an Organization may use personal information without consent. It states, in part:

17 An organization may use personal information about an individual without the consent of the individual but only if one or more of the following are applicable [...]

None of the circumstances set out in section 17 of PIPA for which consent to use personal information is not required appears to me to be relevant or applicable. Neither party has argued that any of the circumstances set out in section 17 of PIPA authorizes the Organization's use of the Complainant's personal information for its business purposes without her consent. I therefore find that the Organization was required to obtain the Complainant's consent to use her personal information.

[para 44] Section 20 of PIPA establishes the circumstances in which an Organization may disclose personal information without consent. It states, in part:

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

[para 45] None of the circumstances set out in section 20 of PIPA for which consent to disclose personal information is not required appears to me to be relevant or applicable. Neither party has argued that any of the circumstances set out in section 20 of PIPA authorizes the Organization's disclosure of the Complainant's personal information

for its business purposes without her consent. I therefore find that the Organization was required to obtain the Complainant's consent to disclose her personal information.

Conclusion

[para 46] I find that the Organization contravened section 7(1) of PIPA when it collected, used, and disclosed her personal information for its own business purposes without her consent.

Issue H: Does the Organization collect, use or disclose the information contrary to, or in accordance with, sections 11(1), 16(1) and 19(1) of PIPA (collection, use and disclosure for purposes that are reasonable)?

Section 11(1)

[para 47] Section 11(1) of PIPA states:

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

[para 48] The Organization's website explains that it collects information about truck drivers from their employers so that it can make available as much information as possible about the truck driver to its clients. As discussed above, the information that is collected includes information about the Complainant's employment history, as recorded by former employers. This history including the names of her former employers, the results of her drug tests and the reasons her employment terminated. There is also information about the Complainant's driver's license number, her date of birth, her social insurance number, family status, height, weight, and address and phone number contained in the records the Organization supplied for the inquiry. The records also include some former employers' views regarding the Complainant's performance and the employers' explanation for why the employment relationship terminated.

[para 49] Some of the personal information the Organization has collected (the Complainant's social insurance number, birthdate, address and telephone information, and driver's license number) is sensitive information, as described in Order P2012-02, in the sense that it could be used to commit identity theft, or to subject the Complainant to harassment or harm.

[para 50] In *Penny Lane Entertainment Group v. Alberta (Information and Privacy Commissioner)*, 2009 ABQB 140, the Alberta Court of Queen's Bench confirmed a decision of former Commissioner Work, in which he had found that a night club's practice of scanning driver's licenses was not reasonable. Commissioner Work determined that the practice was not reasonable because there was no evidence to establish that scanning driver's licenses served the purpose for which the night club was scanning them. In confirming the Commissioner's decision, the Court also commented on the interpretation of section 11 of PIPA:

... Section 11 of the Act requires that the Privacy Commissioner determine whether the collection of personal information by an organization is for a reasonable purpose. Section 3 of the Act defines “reasonable” as what a reasonable person would consider appropriate in the circumstances. The Privacy Commissioner was unable to conclude that the Complainants had a reasonable purpose within the meaning of s. 11 with respect to scanning patrons’ driver’s licenses. I infer from this that the Privacy Commissioner determined that a reasonable person would expect, for such collection of personal information to meet the purpose for which it is intended, that it actually meet that purpose. That is, he reasoned that scanning driver’s licenses in order to enhance security in PLE’s establishments would only meet this purpose if it does in fact, enhance security.

The Privacy Commissioner had to ask himself, quite properly: is this collection of information through the scanning of driver’s licenses correlated in any way to deterring violent behaviour and enhancing the safety of staff and patrons, or is it simply a needless collection of personal information with no purpose whatsoever?

An organization bears the burden in an inquiry of establishing that it has a reasonable purpose in collecting personal information. In this case, the Organization has not made submissions for the inquiry. I am unable to conclude from its website or from the records that it has a reasonable purpose in collecting the Complainant’s personal information or to conclude that it is not needlessly collecting personal information without a purpose. I am unable to determine what the Organization’s purpose was in collecting the Complainant’s personal information, other than to make some of it available to its clients for purchase, and I am therefore unable to correlate the information it has collected with a purpose in collecting it.

[para 51] In finding that the Organization has not established that it has a reasonable purpose in collecting the Complainant’s personal information, I am aware that in *Leon’s Furniture Ltd. v. Alberta (Information and Privacy Commissioner)* [2011] A.J. No. 338, the Alberta Court of Appeal found that the practice of recording driver’s license numbers is reasonable in order to combat fraud. The Court said:

It was not unreasonable for the appellant to conclude that the adjudicator’s solution of just writing down the name and address on the driver’s licence was inadequate, because common names are indistinguishable, and the address may be out of date. A good illustration of the reasonableness of also recording the number is found in the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*, SOR/2002-184, s. 67(a). It is statutory recognition that there is incremental value in recording an identification number along with the name by requiring a financial institution to record, in addition to the name of the person, “. . . if a birth certificate, driver’s licence, provincial health insurance card . . . , passport or any other similar record is relied on to ascertain the person’s identity, the type and reference number of the record and the place where it was issued”. Requiring the production of the driver’s licence is a reasonable way of preventing a fraudster from just (falsely) giving the name of the customer; it provides one further level of security. Going another step, and writing down the driver’s licence number involves no meaningful further intrusion on the customer’s privacy, nor increase in risk of the misuse of the customer’s personal information. Also recording the vehicle licence plate number creates another obstacle for the fraudster, as it provides a second avenue of inquiry. Assuming the information is properly stored (and, again, the appellant’s practices in this regard were not in issue), the added risk is small, as the name and address themselves can be used for illegitimate purposes.

The conclusion that it was reasonable to check identification, but not to record the number would not be considered appropriate by reasonable people. Any large organization needs to keep records for information to be of any use. The personnel on the loading dock undoubtedly perform many identification checks every month, and it is unrealistic to think that they can remember one customer from the other. If someone ever did fraudulently pick up furniture, how could the personnel ever remember who it was, what the circumstances were, and what type of identification was provided if no record is kept? Without a record of the number, how could the personnel provide any useful information to the police who are investigating? Even if the fraudster was driving a borrowed car, having the licence plate number would be valuable information for the police in tracing the culprit. How that information is stored, and the length of time it is held are different matters, but merely recording the identification information is a reasonable and, indeed, sensible practice. Section 17(d) authorizes the use of personal information for just this purpose: “the use of the information is reasonable for the purposes of an investigation or a legal proceeding”. If the appellant is allowed to use it, implicitly it must be able to collect it. The adjudicator’s finding to the contrary is not one reasonably open on the facts and the law.

[para 52] In the case before me, I am able to find that the Organization has not collected the Complainant’s driver’s license number for the purpose of combatting fraud, given that its website and the records do not support a finding that this is its purpose, and *Leon’s* is distinguishable on this basis.

[para 53] In the absence of an explanation by the Organization about its purposes in collecting the personal information of the Complainant, I am unable to find that the Organization’s purposes in collecting all of the Complainant’s personal information that it did were reasonable.

Section 16(1)

[para 54] Section 16(1) states:

16(1) An organization may use personal information only for purposes that are reasonable.

[para 55] I have already found that the Organization has not established that it collects the Complainant’s personal information only for purposes that are reasonable. The Organization has not provided any explanation of its purposes in using the Complainant’s personal information. It follows then, that that I find that the Organization has not established that it has used the Complainant’s personal information only for purposes that are reasonable as required by section 16(1).

Section 19(1)

[para 56] Section 19(1) states:

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

I have already found that the Organization has not established that it collects and uses the Complainant's personal information only for purposes that are reasonable. The Organization has not provided evidence to establish that it has disclosed the Complainant's personal information only for purposes that are reasonable. It follows that I find that the Organization has not established that it has complied with section 19(1).

Issue I: Does the Organization collect, use or disclose personal information contrary to, or in accordance with, sections 11(2), 16(2) and 19(2) of PIPA (collection, use and disclosure to the extent reasonable for meeting the purposes)?

[para 57] If I am wrong in my finding the Organization has not established that it collected the personal information of the Complainant only for purposes that are reasonable, then I must consider whether it is collecting information only to the extent reasonable for meeting those purposes.

Section 11(2)

[para 58] Section 11(2) states:

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 59] As discussed above, the Organization has collected the Complainant's employment history as recorded by former employers, including the names of her former employers, the results of her drug tests and the reasons her employment terminated. It has also collected information about the Complainant's driver's license number, her date of birth, her social insurance number, family status, height, weight, and address and phone number.

[para 60] It is unclear why the Organization has collected the information described above; in the absence of an explanation of its purpose in collecting the personal information or an explanation as to how collecting this information served this purpose, I am unable to conclude that the Organization has collected personal information only to the extent reasonable for meeting its purposes in collecting the Complainant's personal information.

Section 16(2)

[para 61] Section 16(2) states:

16(2) Where an organization uses personal information, it may do so only to the extent that is reasonable for meeting the purposes for which the information is used.

[para 62] The Organization retains all the information it collects both in files and in its database. It is unclear for what purposes the Organization uses this information. In the absence of an explanation of its purpose maintaining for its use the personal information that it has collected, and an explanation as to how maintaining this information for its use serves this purpose, I am unable to conclude that the Organization uses personal information only to the extent reasonable for meeting its purposes.

Section 19(2)

[para 63] Section 19(2) states:

19(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.

[para 64] The Driver History Report, which appears to have been disclosed to three different trucking companies, contains the Complainant's name, her date of birth, and her driver's license number. It also contains the names of her previous employers, whether she was involved in accidents while employed with the employer, the employer's rating of her value as an employee, reasons for termination of the employment relationship, whether she underwent drug testing, was ever charged with impaired driving, her position with the employer, and how the employer rated her performance. The Organization's purposes in disclosing the Complainant's personal information appear to have been to offer a driver history report to its clients.

[para 65] It is not clear whether the Organization disclosed only the driver history report to its clients, or whether it disclosed the other information it has collected about the Complainant, such as her social insurance number. Assuming that the driver history report is intended to enable an employer or prospective employer about the Complainant's performance as an employee, then it is unclear how this purpose is served by disclosing the Complainant's driver's license number.

[para 66] I am unable to conclude that the Organization has disclosed the Complainant's personal information only to the extent reasonable for meeting its purposes.

Issue J: Does the Organization collect personal information directly from the individuals who are the subject of the information, including the Complainant?

[para 67] The records supplied by the Organization and its website establish that the Organization collects personal information from companies employing truck drivers, rather than from the truck drivers themselves.

Issue K: If the Organization collects personal information other than directly from individuals, such as the Complainant, is the collection contrary to, or in accordance with, section 12 (sources for collection)?

[para 68] Section 12 requires an organization to collect personal information directly from the individual whom the information is about, unless the personal information is information that could be collected without consent. Section 12 states:

12 An organization may without the consent of the individual collect personal information about an individual from a source other than that individual if the information that is to be collected is information that may be collected without the consent of the individual under section 14, 15 or 22.

[para 69] I have already found that the Organization was required to obtain the consent of the Complainant when it collected her personal information. I have also found that the Organization did not obtain the Complainant's consent to collect her personal information. I also find that it collected her personal information from her employers and prospective employers, but not from the Complainant herself. It follows that I find that the Organization collected the Complainant's personal information in contravention of section 12 of PIPA.

Issue L: Does the Organization collect personal information contrary to, or in accordance with, section 13 of PIPA? In particular, is it required to provide, and does it provide, notification, before or at the time of collecting the information, in accordance with section 13 of PIPA?

[para 70] Section 13 of PIPA requires an organization to provide notice of its purpose in collecting personal information and the name of someone who can answer for the organization an individual's questions about the collection. This provision also requires an organization collecting personal information to provide sufficient information to the organization from whom it intends to collect the information to enable that organization to decide whether the disclosure would comply with PIPA. This provision states:

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.

[...]

(3) Before or at the time personal information about an individual is collected from another organization without the consent of the individual, the organization collecting the personal information must provide the organization that is disclosing the personal information with sufficient information regarding the purpose for which the personal information is being collected in order to allow the organization that is disclosing the personal information to make a determination as to whether that disclosure of the personal information would be in accordance with this Act.

(4) Subsection (1) does not apply to the collection of personal information that is carried out pursuant to section 8(2).

[para 71] The Organization did not provide any notice to the Complainant of its collection of her personal information, and therefore, did not indicate its purposes in doing so, or provide the name of an individual who could answer her questions. In addition, my review of the Organization's website leads me to infer that it does not inform those organizations that disclose employee's personal information to it, its purposes in obtaining the information in accordance with section 13(3) so that they may make a determination as to whether the disclosure is authorized. I have already found that the Complainant's personal information was not collected in compliance with section 8(2).

[para 72] For these reasons, I find that the Organization collected the Complainant's personal information in contravention of section 13 of PIPA.

Issue M: Did the Organization make a reasonable effort to ensure that any personal information about the Complainant which it collected, used, or disclosed is accurate and complete as required by section 33 of the Act (accuracy of information)?

[para 73] Section 33 of PIPA requires an organization to make reasonable efforts to ensure that the personal information it collects, uses, or discloses is accurate and complete. This provision states:

33 An organization must make a reasonable effort to ensure that any personal information collected, used or disclosed by or on behalf of an organization is accurate and complete to the extent that is reasonable for the organization's purposes in collecting, using or disclosing the information.

[para 74] The Complainant argues that the personal information the Organization has collected, used, and disclosed is potentially damaging to her career and to her reputation. She argues that the Organization has not taken sufficient measures to ensure the accuracy of the information it has collected, used, and disclosed about her.

[para 75] In Order P2008-010, the Director of Adjudicator considered section 33 and what is meant by the phrase "accurate and complete to the extent that is reasonable

for the organization's purposes in collecting, using, or disclosing the information". She said:

Before concluding this part of the discussion, I note that the Organization has told me that it shares information from the database with other lawyers. In my view, the same limitations (discussed at para 78 above) that apply in terms of entering information in the database, apply in deciding whether to share the information. Any parts of the personal information of officers can be shared by reference to sections 14(d), 17(d), and 20(m) only where the information is such as can be reasonably regarded as useful and relevant for defending against a proceeding or initiating an existing or currently-contemplated action against an officer. It would not be permissible to share information which consists of allegations that are not credible or would be impossible to substantiate, or other frivolous material that it would be unreasonable to believe has some basis in fact. It must also be evident how this information could be relevant to the defence or to the action. As well, the recipients of the information can only be the persons who will use the information for the purpose of legal proceedings. Indeed, to the extent the database contains officers' personal information (that does not fall into the 'court records' or 'publicly available' categories), the database must be kept secure and inaccessible to personnel within the law firm who do not need to collect, use or disclose it for the purpose of investigations or legal proceedings within the terms discussed above.

I also acknowledge the Complainant's point that section 33 of the Act requires that organizations make reasonable efforts to ensure that personal information in their possession is accurate and complete. I have already said that questionable, anecdotal material that does not appear to be potentially capable of substantiation should not be entered. However, section 33 does contain the qualifier that the accuracy requirement is only that the information be accurate to the extent reasonable for the organization's purposes. As the Act authorizes collection for the purposes of an investigation, information that is reasonably likely to be useful in an investigation may be collected, used and disclosed even though its accuracy cannot be established with certainty at the start (and indeed may never be proven), and the same would be true for information that is sufficiently credible to enter it in a proceeding, even though it might later prove to be false. While some degree of credibility is required, flexibility is also required, given the purposes for which such information can be used under the Act.

[para 76] In other words, the duty to ensure the accuracy and completeness of personal information does not require an organization to confirm that the information is true; the personal information need only be accurate to the extent reasonable for the organization's purposes in collecting, using, or disclosing the personal information.

[para 77] The purpose of the Organization in collecting, using and disclosing the personal information of truck drivers appears to be that it believes that employers will benefit from the opinions and experience of other truck companies in relation to individual truck drivers they have employed. The driver's report that is disclosed essentially contains past employer's opinions about truck drivers. (The driver's report also contains the name, driver's license, and birthdate of the driver, however the accuracy of this information does not appear to be in issue. In any event, I will order the Organization to cease collecting, using, and disclosing Complainant's personal information for its own business purposes.) To the extent that the Organization provides the opinions of past employers to prospective employers, then it appears that the opinions it exchanges accurately reflect the opinions of past employers. This is not to say that the information being disclosed is not potentially defamatory, only that PIPA does not require the Organization to establish that information is true, when its purpose in

collecting, using, and disclosing personal information is to exchange the opinions of previous employers about employees and not facts.

IV. ORDER

[para 78] I make this Order under section 52 of the Act.

[para 79] I order Professional Drivers Bureau of Canada Inc. to ensure that it has located all personal information about the Complainant in its custody or control, by conducting a new search for records containing information responsive to her request for access and to provide any additional information that is located as a result of the new search to the Complainant, subject to any exceptions to disclosure in the Act.

[para 80] I order Professional Drivers Bureau of Canada Inc. to document the steps it takes to locate the Complainant's personal information and to provide an explanation of these steps to the Complainant. The explanation must also state why Professional Drivers Bureau of Canada Inc. believes that no further records exist.

[para 81] I order Professional Drivers Bureau of Canada Inc. to cease collecting, using, and disclosing the personal information of the Complainant in contravention of PIPA.

[para 82] I further order Professional Drivers Bureau of Canada Inc. to notify me, in writing, within 50 days of receiving a copy of this Order, that it has complied with the Order.

Teresa Cunningham
Adjudicator