

**ALBERTA
INFORMATION AND PRIVACY COMMISSIONER**

**Report of an Investigation Concerning
the Collection and Security of Personal Information**

August 24, 2005

SAS Institute (Canada) Inc.

Investigation Report P2005-IR-008

I. INTRODUCTION

[1] The Office of the Information and Privacy Commissioner of Alberta (“OIPC”) received a complaint alleging that SAS Institute (Canada) Inc. (“SAS”) collected personal information in contravention of the *Personal Information Protection Act* (“PIPA” or “the Act”).

[2] Specifically, the complainant was required to consent to a “credit check” when she applied for a position with SAS. She subsequently complained that the organization’s collection of her personal credit information was not reasonable under the circumstances. The complainant was also concerned about the security of her personal information held by the organization contracted by SAS to conduct background checks.

II. JURISDICTION

[3] PIPA applies to provincially regulated private sector organizations in Alberta. The Act sets out the provisions under which organizations may collect, use or disclose personal information, and also places a duty on organizations to protect personal information in their custody or control against such risks as unauthorized access, collection, use, disclosure or destruction.

[4] The Information and Privacy Commissioner has jurisdiction in this case because SAS is an “organization” as defined in section 1(i) of the Act, operating in the province of Alberta.

[5] Section 5(2) of the Act states:

For the purposes of this Act, where an organization engages the services of a person, whether as an agent, by contract or otherwise, the organization is, with respect to those services, responsible for that person's compliance with this Act.

[6] SAS has engaged the services of BackCheck for the purpose of conducting background checks on prospective employees. Therefore, pursuant to section 5(2) of the Act, SAS is responsible for BackCheck's compliance with the Act with respect to the provision of those services, and specifically when BackCheck collects, uses or discloses personal information on behalf of SAS.

[7] The Commissioner assigned me to investigate this complaint. This report sets out my findings and recommendations.

III. FINDINGS OF FACT

[8] In investigating this matter, I initially spoke with the complainant who provided me with a copy of her original letter to SAS in which she requested access to her personal information as well as an explanation of the organization's purpose(s) for collecting her personal credit information. The complainant also provided a copy of SAS's response to her request, which included a consent form signed by the complainant authorizing the collection of her credit information.

[9] I spoke with a SAS Human Resources Manager (who is a member on the organization's Privacy Committee), as well as the organization's Corporate Counsel, and exchanged correspondence with both. I reviewed the job description for the position the complainant applied for, the organization's policies and procedures respecting employee privacy, and forms used to obtain consent for various background checks.

[10] Finally, I reviewed the privacy policies of BackCheck (the organization contracted by SAS to conduct credit check inquiries), and spoke to representatives of that organization. I also reviewed general correspondence between SAS and third party service providers respecting the collection, use, disclosure and security of personal information under a service agreement.

[11] SAS's website describes the organization as "the world's largest privately held software company" and the "market leader in providing a new generation of business intelligence software and services." The organization has offices in a number of Canadian provinces, including Alberta.

[12] The complainant applied for a position with SAS as an Administrative Assistant/Receptionist. After submitting her resume and attending an

interview, she was asked to sign a “Declaration of Understanding and Consent for Background Checks,” which she did.

[13] The complainant was subsequently told that SAS had decided against hiring her. Shortly thereafter, she submitted a request to the organization for:

... access to the personal information collected during the selection process and the names of the individuals who have access to my personal information. I would also like access to any notes taken during the interview process.

[14] At the same time, the complainant requested “information regarding [SAS’s] policies and procedures around the collection of personal credit” and “an explanation as to why [SAS] deems a personal credit check reasonable collection for the specific position that I was interviewed for.”

[15] In response to the complainant’s request, SAS provided copies of her personal information, including a report from BackCheck indicating her Canadian Credit Inquiry was “not clear.” The organization’s response letter stated that “It is the policy of SAS Institute that personal credit checks are conducted on every single applicant being considered for a final offer, regardless of position.”

[16] With respect to the complainant’s inquiry as to the names of individuals having access to her personal information, SAS stated the information was stored in confidential Human Resources files and is not shared outside the Human Resources department, although “the company conducting the background check (BackCheck), also has some of your personal information.”

[17] The complainant was not satisfied with the response she received from SAS and complained to the OIPC that the organization’s collection of her personal credit information was not reasonable given the requirements of the position she applied for.

[18] The complainant also expressed concern about the security of her personal information given that she was told BackCheck maintained some of her personal information, possibly in files or databases in another country (the United States).

IV. ISSUES

- [19] 1. Does this collection involve “personal information” or “personal employee information” under PIPA?
2. Did SAS collect the complainant’s information in contravention of PIPA?

3. Did SAS make reasonable security arrangements to protect personal information in its custody or control?

V. ANALYSIS

1. Does this collection involve “personal information” or “personal employee information” under PIPA?

[20] “Personal information” is defined in section 1(k) of PIPA to mean “information about an identifiable individual.” Under the Act, “personal employee information” is a subset of personal information. It is defined in section 1(j) to mean:

...in respect of an individual who is an employee or a potential employee, personal information reasonably required by an organization that is collected, used or disclosed solely for the purposes of establishing, managing or terminating

(i) an employment relationship ...

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

[21] Pursuant to section 1(j), I first considered whether the personal information SAS collected about the complainant was “personal employee information” under the Act. That is, whether SAS’s collection of the information was “reasonably required ... solely for the purposes of establishing ... an employment relationship” between SAS and the complainant.

[22] The organization advanced three purposes for the collection of the complainant’s personal credit information as follows:

1. To assess the applicant’s suitability to manage petty cash
2. To minimize credit card fraud
3. To validate employment history

[23] I have considered each of these three purposes below.

1. Assess suitability to manage petty cash

[24] The complainant applied for a position with SAS as an Administrative Assistant/Receptionist. The job description for the position lists “orders basic office supplies and handles petty cash” among the position’s “major responsibilities.”

[25] SAS reported that one of its purposes for collecting credit information in this case was to determine the complainant's suitability for the position. Specifically, SAS stated:

... though it may not be true in every case, SAS assumes that an individual who can manage her own finances is better suited to manage the petty cash of her employer. Personal credit information, though by no means determinative on its own, is therefore a useful consideration when considering an applicant's suitability for such a position.

[26] SAS contracts with BackCheck to conduct background checks on prospective employees. The consent form that applicants are asked to sign states:

I understand that the background check process includes a consumer credit inquiry with retrieval of information from a major Canadian credit bureau.

[27] Typically, a consumer credit inquiry report will include such information as an individual's name, age, occupation, previous employers, past and present addresses, marital status, number of dependants, education, past and present employment, estimated income, paying habits, existing debts, etc.¹ By their nature, these reports may include information about an individual that is collected outside of an employment relationship, such as payment history on a personal credit card, personal bank loans, bankruptcies, etc. BackCheck collects this information on a prospective employee, and then provides a report to SAS indicating either that the applicant's "Canadian Credit Inquiry" is "clear" or "not clear." If "not clear," BackCheck provides an additional report with more detailed information.

[28] I agree with the organization that determining whether an applicant is suited to perform the functions of a job is a legitimate issue that the organization needs to address. However, I note that there may not necessarily be a correlation between an individual's ability to manage his or her own finances and an ability to do so on behalf of the organization. For example, an individual's personal credit problems could be the result of factors beyond the individual's control, such as medical problems or a period of unemployment. As a result, collecting personal credit information may not necessarily be effective in assessing an individual's suitability to manage finances in an employment context.

¹ *Consumer Tipsheet: Credit and Personal Reporting*, Alberta Government Services, Consumer Services Branch, January, 2002 (<http://www3.gov.ab.ca/gs/pdf/credit.pdf>)

[29] Before collecting the amount and type of information that might be included in a personal credit report, other factors should also be considered, including whether there are other, possibly more effective and/or less intrusive, means to achieve the same purpose.

[30] In this case, the complainant's resume listed at least four previous employment positions that involved managing finances, ranging from reconciling payable invoices to organizing returns for Canada Customs and Revenue Agency, posting cheques into client accounts for a financial institution, and preparing cash receipts and weekly deposits. Given this, I believe it would have been more reasonable for SAS to have contacted these previous employers to determine whether the complainant was proficient with respect to managing finances, rather than collect the amount and type of information that may be included in a personal credit report. Doing so would likely have been more effective as well, as the organization would be collecting information directly related to the applicant's previous performance in an employment context, rather than her performance with respect to managing personal finances.

[31] As well, in determining whether the organization's collection of personal credit information was reasonably required to recruit the applicant, I also considered the value of the petty cash float and the risk assumed by the organization in hiring someone lacking the skills necessary to manage the fund. By its very nature, a petty cash float is of nominal value and therefore the risk assumed by the organization was minimal in the event the funds were misappropriated or otherwise mishandled. I also considered that there were other ways the organization might deal with an employee having difficulty in managing the fund, which would have been less intrusive than collecting a personal credit report. For example, procedures for reconciling petty cash with purchase receipts, and periodic checks by a supervisor.

[32] It is worth noting that SAS reported there were no particular concerns about theft of petty cash as there had been no previous issues of this kind. Instead, the organization acknowledged that "the exposure to petty cash theft is minimal and in and of itself does not likely justify the loss of privacy."

[33] Given these considerations, and the significant amount and type of information that may be provided in a consumer credit inquiry report, I am not persuaded that the collection of credit information in this case was reasonably required to determine the complainant's suitability to manage petty cash.

2. Minimize credit card fraud

[34] The second purpose for which SAS stated it collected personal credit information from job candidates is to minimize credit card fraud. The organization reported that:

Most SAS employees are eligible to receive a corporate American Express Credit Card as well as a corporate Bell Calling Card. These cards are to be used for business purposes only. If, however, such cards are used for non-business purposes SAS is liable to the card issuer. Accordingly, a demonstrated ability to manage credit is a relevant concern.

[35] Again, in determining whether SAS's collection of the complainant's credit information was reasonably required for this purpose, I first considered whether SAS had a legitimate business need for collecting the information. The organization confirmed that had the complainant been hired by SAS she would have been eligible to apply for certain credit cards. SAS also reported the organization had experienced two incidents of corporate credit card abuse in the recent past, one of which resulted in improper charges of thousands of dollars. The organization stated:

... collecting personal credit information may not prevent future incidents of corporate credit card abuse, but will arguably reduce the likelihood for such abuse by allowing SAS to screen out potential employees who have demonstrated problematic credit histories.

[36] In these circumstances, I agree with SAS that when issuing a credit card to an employee the organization may have a legitimate interest in collecting information that would show an applicant's ability to manage credit. However, I also note again that there may not necessarily be a correlation between an individual's ability to manage his or her own credit, and an ability to manage credit on behalf of the organization. For example, a credit report that shows an individual has consistently missed payments on a personal credit card may be indicative of his or her ability to manage corporate credit; on the other hand, personal credit problems could again be the result of factors beyond the individual's control.

[37] However, in this case, the applicant was applying for employment, not a credit card. Further, the organization confirmed that holding a corporate credit card was not a necessary requirement of the position. That is, the complainant could have functioned in the position as Receptionist/ Administrative Assistant without holding either a corporate American Express or Bell Calling Card.

[38] Given these circumstances, with respect to the specific purpose of minimizing potential fraudulent use of corporate credit cards, I find that SAS's collection of the complainant's personal credit information was not reasonably required to establish an employment relationship. I believe it would be more appropriate to collect the credit information after hire, if and when the employee applies for a credit card, and where reasonable to do so in the circumstances.

[39] The organization agreed with this finding by stating “If the objective of the credit check was purely to minimize credit card fraud ...[this] suggested approach and timing would seem entirely reasonable.” However, SAS pointed out that minimizing potential credit card fraud was only one of the organization’s purposes for collecting the credit information. Therefore, it remains for me to consider the organization’s third purpose for collecting the complainant’s credit information.

3. Validate employment history

[41] SAS stated its third purpose for collecting personal credit information of job applicants is as follows:

Personal credit information may also be useful in validating an applicant’s employment history to the extent that it is available. A personal credit report may list an employment income source omitted from a resume. That omission would then be raised with the applicant in an effort to obtain a complete picture of the applicant’s employment history.

[42] And further:

...the desire to obtain a complete and accurate picture of an applicant’s employment history is significant. SAS, as with most employers, would want to know if and why an applicant has selectively omitted a period of employment from his or her resume. It is an issue that would typically be probed in an interview if the applicant is otherwise suitable for the position.

[43] Once again, I agree that SAS has a legitimate interest in obtaining a complete and accurate picture of an applicant’s employment history. The Consumer Services Branch of Alberta Government Services confirmed that consumer (credit) reports furnished by a major Canadian credit bureau may provide information about both an individual’s current as well as previous employers. However, they also said that this information may not be up-to-date, accurate, or comprehensive, and so would not be the most reliable source for information about previous employment experiences. Therefore, collecting the complainant’s personal credit information would not necessarily be effective for meeting the organization’s stated purpose of validating employment history.

[44] Further, in reviewing the complainant’s resume as submitted to SAS, I noted there were gaps in the listed employment history, totalling two months in 2002, and one month in 2003. When asked about these gaps, the complainant reported that during these periods she worked for a temporary placement agency. In the interests of streamlining her resume, she had not included

temporary assignments lasting a few weeks only. She indicated she had been prepared to provide the names and contact information of these temporary employers had SAS requested them. She reported that during her pre-employment interview with SAS, the organization asked about these gaps in her employment history, but appeared satisfied with the complainant's response that she had worked for a temporary placement agency. SAS did not request to contact these employers to verify the information provided by the complainant.

[45] While I agree with SAS that a prospective employer would reasonably want to know if and why an applicant selectively omitted a period of employment from his or her resume, I also agree with the organization's statement that "this is an issue that would typically be probed during the interview process." In fact, I would suggest that it is more reasonable, and likely more effective, for an organization to probe this issue during the interview process than through the collection of a credit report. In this case, in the absence of a satisfactory response, or to verify information provided, the organization might then contact the temporary employers identified by the complainant.

[46] In my opinion, collecting a credit report that may contain significant amounts of unrelated personal information in order to probe an applicant's unreported sources of employment income is an unreasonable collection of extensive personal information. As a result, I find that SAS's collection of the complainant's personal credit information in order to verify the employment history listed on her resume was not reasonably required to establish an employment relationship.

[47] Having also determined that SAS's collection of the information was not reasonably required to assess the complainant's suitability to manage petty cash, or to minimize the potential for credit card fraud, I find that the information does not qualify as personal employee information under the Act.

2. Did SAS collect the complainant's information in contravention of PIPA?

[48] Although the complainant's information does not qualify as personal employee information under PIPA, it is nonetheless "personal information," and therefore section 11 of the Act applies. This section states:

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

(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.

[49] I have already stated above that I believe it is reasonable for the organization to collect personal information to assess an applicant's suitability to manage petty cash, and to validate employment history. However, I also stated that collecting the amount and type of information that might be found in a credit inquiry report was not reasonable in the circumstances because:

- the organization had less intrusive and likely more effective means at its disposal to assess the complainant's ability to handle cash, including contacting previous employers,
- the organization had less intrusive and likely more effective means at its disposal to validate the complainant's employment history. That is, the organization could have simply asked her about gaps in her employment history during the interview process, and confirmed the information with the temporary placement agencies for which she claimed to have worked.

[50] As a result, I find that the organization's collection of the complainant's personal credit information in these circumstances was over and above the extent reasonable for meeting its purposes.

[51] I also stated previously that where an employee applies for a corporate credit card it may be reasonable, in some cases, to collect personal credit information for the purpose of minimizing the risk of credit card fraud. However, in this case, the complainant was applying for employment, and not a credit card. Therefore, I find the organization's stated purpose of collecting personal credit information to minimize the risk of credit card fraud was not reasonable.

[52] I therefore find that SAS contravened section 11(1) of the Act by collecting the complainant's personal information for a purpose that was not reasonable. As well, the organization contravened section 11(2) of the Act when it collected the complainant's personal information over and above the extent reasonable to assess suitability to manage petty cash and validate employment history.

3. Did SAS make reasonable security arrangements to protect personal information in its custody or control?

[53] The complainant in this matter was also concerned about the security of her personal information in the custody of BackCheck, and particularly whether the information was maintained in files or databases in another country (e.g. the United States).

[54] Section 34 of the Act states that:

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.

[55] SAS provided information about its security measures related to personal information collected on its behalf by BackCheck. SAS reported:

Among other things, the written agreement in place between SAS and BackCheck provides:

- *“All ... information will be kept in a secure location only accessible to authorized BackCheck personnel.”*
- *“All information gathered by BackCheck employees is kept strictly confidential.”*

[56] Further, SAS pointed out that BackCheck’s Privacy Policy and Governing Guidelines include additional provisions which, among other things:

- limit BackCheck’s use and disclosure of personal information,
- state that BackCheck has advanced security in place to safeguard personal information about clients and their employees or employment applicants,
- provide for individuals to view, challenge and if duly warranted amend information as appropriate,
- allow clients to specify the retention period to be applied to personal information collected on their behalf.

[57] SAS also provided me with a copy of correspondence sent to all existing third party suppliers who may have access to personal information gathered by SAS. The letter included an attachment setting out data privacy clauses to be incorporated into agreements the organization has in place with third party suppliers. Among other things, these privacy clauses limit use of the information and require the protection of personal data.

[58] Finally, SAS reported, and BackCheck confirmed, that BackCheck retains all information on a secure server in Canada, and that the information does not cross borders into the United States.

[59] Based on the information provided by SAS and my review of BackCheck’s Privacy Policy, I am satisfied that, through contractual provisions, SAS has taken steps to implement reasonable measures to ensure that personal information collected on its behalf by BackCheck is safeguarded as required under section 34 of PIPA.

VI. RECOMMENDATIONS

[60] I was pleased to note that SAS does not collect personal credit information from all applicants for a position. Instead, credit checks are only conducted once the hiring manager has advised the SAS Human Resources group that a particular candidate is acceptable for the position and that the hiring manager would like to move forward in the process with that particular applicant.

[61] However, I am concerned that SAS initially told the complainant that its policy is to conduct personal credit checks on “every single applicant being considered for a final offer, regardless of position.” As set out in this report, collecting this type of information will only be reasonable where warranted under the circumstances. Therefore, I recommend that SAS:

1. Review the responsibilities of a position when hiring to ensure that credit information is reasonably required to determine a candidate’s suitability. This will require assessing relevant factors including whether:
 - there is a clear need that must be addressed through the collection of the information,
 - the collection of the information is likely to be effective in addressing that need,
 - there are less intrusive and/or more effective means to achieve the same results.
2. Where the organization determines that credit information is reasonably required, revise the consent forms to clearly state the purpose for collection. I make this recommendation noting that the three purposes for collecting the information that were advanced by the organization during this investigation are not reflected in the notification of purpose statements as they appear on the consent forms, nor were they provided to the complainant when she first requested information about the organization’s purposes for collecting her credit information.
3. Where SAS determines that credit information is reasonably required to establish an employment relationship with an individual, the organization should clearly state in all job postings/ advertisements that a credit check may be required of the successful candidate.

VI. OTHER CONSIDERATIONS

[62] During the course of this investigation, I noted that SAS’s “Declaration of Understanding and Consent for Background Checks” form states information collected is used for identification purposes only, and so that BackCheck can proceed with background checks. One of the personal information data

elements requested is the individual's Social Insurance Number (SIN). With respect to this matter, I referred the organization to PIPA Investigation Report P2004-IR-001 (available at www.oipc.ab.ca), which deals with collection of SINs for credit check purposes. In that report, the Investigator found that credit reporting agencies do not require an individual's SIN in order to conduct a credit check, and it is unreasonable for an organization to require a SIN where credit reporting bureaus do not. I therefore recommended that SAS revise their form to clearly indicate that providing a SIN is optional.

VII. CONCLUSION

[63] Collecting credit information about a potential employee may be necessary under certain circumstances for particular positions. However, given the amount and type of information that may be contained in a credit report, organizations are advised to carefully consider the potential privacy issues associated with collecting this information to ensure that it is reasonable to do so in the circumstances.

[64] SAS cooperated fully with our Office during this investigation and agreed to implement all recommendations. In subsequent correspondence from SAS, I was advised the organization has implemented a policy of conducting credit checks only if and when an employee requests a corporate credit card, and where reasonable to do so in the circumstances.

[65] This file is now closed.

Jill Clayton, Senior Portfolio Officer
Office of the Information and Privacy Commissioner