

**ALBERTA OFFICE OF THE
INFORMATION AND PRIVACY COMMISSIONER**

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

December 17, 2007

Ticketmaster Canada Ltd.

Investigation Report #P2007-IR-007

I. INTRODUCTION

[1] The Office of the Information and Privacy Commissioner of Alberta (“Office”) received a complaint in respect of an on-line purchase on Ticketmaster Canada Ltd’s (“Ticketmaster” or “the Organization”) website, www.ticketmaster.ca. The Complainant alleged that Ticketmaster required customers to consent to the collection, use and disclosure of personal information as a condition of a ticket sales transaction, in contravention of the *Personal Information Protection Act* (“PIPA” or “the Act”).

II. JURISDICTION

[2] 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.

[3] The Information and Privacy Commissioner has jurisdiction in this case because Ticketmaster is an “organization” as defined under section 1(i), and is operating in Alberta.

[4] Ticketmaster also provides a contracted service to event providers (i.e. venues, concert promoters, teams and sport leagues) for whom Ticketmaster offers ticketing services. When providing ticketing services on behalf of the event providers, Ticketmaster is the conduit through which event providers collect the customer’s personal information in connection with the issuance of a ticket to the customer. The Organization presents the customer with a “one window approach” to purchase an event ticket which can be accessed through its ticket centre outlets, call centres and its website.

[5] As such, sections 5(2) and 5(6) of PIPA apply. These sections state:

5(2) 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.

5(6) Nothing in subsection (2) is to be construed so as to relieve any person from that person's responsibilities or obligations under this Act.

[6] Given this, it is my determination that there is a shared responsibility under PIPA by Ticketmaster and the applicable event provider when providing services to the customer. This business relationship requires both Ticketmaster and the event providers to comply with the Act when providing services offered to the customer.

[7] Section 36(1) of the Act empowers the Commissioner to conduct investigations to ensure compliance with any provision of PIPA and make recommendations to organizations regarding their obligations.

[8] Pursuant to section 49 of PIPA, the Commissioner authorized me to investigate this matter. This report outlines my findings and recommendations, which may be made public according to section 38(6) of the Act.

III. INVESTIGATION AND BACKGROUND

[9] For the purposes of this investigation, I spoke with, and met, the Complainant, Ticketmaster's General Manager/Privacy Officer for Canada and the Organization's legal counsel. I received and reviewed Ticketmaster's written response to the complaint, and examined the Organization's website, privacy policy and on-line "Use of Personal Information" privacy statement.

[10] Following the initiation of this Office's investigation, the Office of the Privacy Commissioner of Canada ("OPC") received complaints alleging that Ticketmaster's website policies and practices did not comply with the requirements of the *Personal Information Protection and Electronics Documents Act* (PIPEDA). These complaints to the OPC primarily focus on the perceived complexity and ambiguity of Ticketmaster's privacy policy as posted on the Organization's website.

[11] According to section 43.1(2)(a) of PIPA, the Alberta Information and Privacy Commissioner may consult with the OPC with respect to matters that come under this Act or other information protection statutes. As such, this Office engaged in communication with the OPC to coordinate parallel investigations of the matters at issue and to provide a harmonized approach to resolution of the complaints.

[12] Section 43.1(2)(a) of the Act reads:

43.1(2) The Commissioner may, where the Commissioner considers it appropriate to do so, do one or more the following:

(a) consult with or enter into agreements with extra-provincial commissioners with respect to matters that come under this Act or other information protection statutes;

The Complaint

[13] The Complainant went on Ticketmaster's website to purchase tickets for an event. During the on-line transaction, a privacy statement was displayed explaining how the Organization collects, uses and discloses personal information. At the time, Ticketmaster's on-line privacy statement read:

Privacy Statement - Use of Personal Information

By purchasing a ticket to an event, or completing this registration form in order to be able to purchase a ticket to an event or to bid in an auction, you indicate that you consent to Ticketmaster sharing your email address and other information with those who bring you the event (e.g., venues, teams, artists' representatives and fan clubs, promoters and leagues), and that you consent to those involved in the event using your information to email or other means to send you marketing or other messages or using or disclosing your information in other ways. Please contact them directly to learn about their policies. By completing this registration form, you also indicate that you consent to Ticketmaster contacting you by email or other means to send you marketing or other messages and using and disclosing the information you submit, as described in the Ticketmaster Privacy Policy.

[14] As a final step in processing the Complainant's on-line ticket purchase, an abridged version of Ticketmaster's purchase and privacy policies were displayed on the website as follows:

Submit Order

...By purchasing a ticket to this event, you are consenting to Ticketmaster sharing your email address and other information with those involved in this event (e.g. venues, teams, artists' representatives and fan clubs, promoters and leagues), and you are consenting to those involved in this event using your information to contact you by email or other means to send you marketing or other messages or using or disclosing your information in other ways. Please contact them directly to learn about their policies.

By clicking the "Submit Order" button, you are agreeing to the Ticketmaster Purchase Policy including the Refund and Exchanges and Cancelled Events section, as well as the Privacy Policy...

[15] The Complainant claimed that he was unable to proceed with his on-line ticket purchase unless he consented to Ticketmaster's "Use of Personal Information" privacy statement. The Complainant was particularly concerned with the contents of the privacy statement, which authorizes Ticketmaster to share his email address with the event providers for the event providers' marketing purposes.

Response to the Complaint

[16] Ticketmaster operates in 20 global markets providing ticket sales, ticket resale services, marketing and distribution through its e-commerce website on the Internet, approximately 6,500 retail ticket centre outlets, and 20 worldwide telephone call centres.

[17] The Organization maintained that it is the agent of the event providers and pursuant to its contract with the event providers, the event providers have full rights to the personal information collected by Ticketmaster in connection with the sale of tickets to the event provider's event over the telephone and its website. Ticketmaster pointed out that it does require the event providers to agree to comply with applicable personal information protection laws by contract; however, it does not control how the event provider will use customers' personal information it receives from Ticketmaster.

[18] Ticketmaster advanced that the customers' consent to the "Use of Personal Information" privacy statement is mandatory to complete the purchase of event tickets by telephone or on-line. Furthermore, Ticketmaster maintained that customers cannot limit the type and amount of personal information to be shared with the event providers when purchasing tickets by telephone or on-line as the customers' personal information is necessary for the event providers to process payments, to deliver the tickets and to provide customer support.

[19] Ticketmaster maintained that it collects personal information in connection with a ticket sale transaction (including name, address, email address, and credit card information) on behalf of the applicable event provider.

IV. ISSUES

[20] The issues that will be examined in the remainder of this report are as follows:

1. Is the information at issue personal information, as defined in section 1(k) of PIPA?
2. Does Ticketmaster collect customers' personal information in compliance with section 11 of PIPA (for reasonable purposes and to the extent reasonable for those purposes)?
3. Does Ticketmaster require customers to consent to the collection, use or disclosure of personal information beyond what is "necessary" to provide the product or service, contrary section 7(2) of PIPA?
4. Does Ticketmaster give customers a reasonable opportunity to opt-out of having their personal information used by event providers for marketing purposes, in accordance with section 8(3) of PIPA?

V. ANALYSIS

1. Is the information at issue personal information, as defined in section 1(k) of PIPA?

[21] Personal information is defined by the Act to mean, "information about an identifiable individual" (section 1(k) of PIPA). In this case, the information at issue is the Complainant's full name, mailing address, telephone number, email address, credit card number, type of credit card and expiry date. Therefore, I find that the information at issue is about

an identifiable individual and qualifies as personal information. As such, PIPA applies to this information.

2. Does Ticketmaster collect customers' personal information in compliance with section 11 of PIPA (for reasonable purposes and to the extent reasonable for those purposes)?

[22] Section 11 of PIPA reads:

11(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.

[23] Section 2 sets out the standard as to what is considered reasonable under PIPA:

2. Where in this Act anything or any matter

(a) is described, characterized or referred to as reasonable or unreasonable, or

(b) is required or directed to be carried out or otherwise dealt with reasonably or in a reasonable manner,

the standard to be applied under this Act in determining whether the thing or matter is reasonable or unreasonable, or has been carried out or otherwise dealt with reasonably or in a reasonable manner, is what a reasonable person would consider appropriate in the circumstances.

[24] Ticketmaster stated that its purposes for the collection of customer personal information over the telephone or over the Internet include: processing payment for tickets purchased, notifying the customer of an event cancellation or postponement, verifying the customer's identity when tickets are picked up, and replacing lost tickets.

[25] In reviewing Ticketmaster's purposes for the collection of customer personal information over the telephone or over the Internet, I find the purposes (identified) to be reasonable, and what a customer would expect when making an on-line or telephone ticket purchase.

[26] With respect to the extent to which the customers' personal information was collected by Ticketmaster, it is my view that the amount and type of personal information collected is reasonable for the identified purposes, as it is the least amount of personal information necessary to fulfill the purposes.

[27] Ticketmaster's collection of customers' personal information over the Internet (for the purposes identified) meets the requirements of sections 11(1) and 11(2) of PIPA.

3. Does Ticketmaster require customers to consent to the collection, use or disclosure of personal information beyond what is "necessary" to provide the product or service, contrary to section 7(2) of PIPA?

[28] Subsection 7(2) of PIPA reads:

7(2) An organization shall not, as a condition of supplying a product or service, require an individual to consent to the collection, use or disclosure of personal information about an individual beyond what is necessary to provide the product or service.

[29] Pursuant to section 7(2) of PIPA, Ticketmaster may only require a customer to consent to the collection, use or disclosure of personal information to the extent that the information is *necessary* to provide a particular product or service.

[30] The product or service being provided in this case is event tickets. I have established that Ticketmaster's purposes for collecting the customers' personal information over the Internet for processing and administration of a ticket purchase are reasonable. That is, I agree with Ticketmaster that the collection of customers' personal information is necessary to process payments and to administer the issuance of a ticket.

[31] However, at the time of the complaint, Ticketmaster also required customers to consent to the Organization providing personal information to the event provider for the event provider's marketing purposes. This was mandatory; a customer could not complete an on-line ticket purchase without first consenting to this use of his or her personal information. It is my opinion that the event provider's marketing purpose is a secondary use of personal information that is beyond what is necessary to complete the ticket sales transaction.

[32] Ticketmaster advanced that event providers have full right to the personal information collected by the Organization in connection with the sale of tickets on-line as per Ticketmaster's contract with the event providers. It is my view that the event providers do not have the automatic right to use customers' personal information (email address) for marketing purposes simply because the customer purchased a ticket to their event from Ticketmaster. The event providers and Ticketmaster cannot require a customer to agree to a use of personal information beyond what is necessary to provide a product or service.

[33] Ticketmaster also maintained that the customers' personal information (email address) is collected and given to the event providers for customer support such as: notification of cancellation/postponement of an event. However, in reviewing Ticketmaster's "Cancelled/Postponed Events" on-line section, I found that Ticketmaster, not the event providers, is responsible for informing the customer of refund or exchange procedures when an event is cancelled or postponed.

[34] Lastly, I was also concerned that Ticketmaster required a customer as a condition of purchase to consent to the use or disclosure of their personal information (email address) to event providers not only for marketing purposes, but for "other messages" and "in other ways". Ticketmaster was imposing upon customers a blanket consent requirement to disclose their personal information to event providers for unspecified uses. I find this consent provision to be beyond what is necessary to complete the ticket sales transaction.

[35] Given the above, I find that Ticketmaster's requirement that customers consent to the use of their personal information by event providers for marketing purposes is beyond what is necessary for the ticket sales transaction. Therefore, I find that Ticketmaster contravened section 7(2) of PIPA.

4. Does Ticketmaster give customers a reasonable opportunity to opt-out of having their personal information used by event providers for marketing purposes, in accordance with section 8(3) of PIPA?

[36] If an organization is going to assume an individual's consent to use personal information for particular purposes, it must also provide the individual with a reasonable opportunity to decline or object to having his or her personal information used for those purposes.

[37] Subsection 8(3) of PIPA reads:

8(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.

[38] Although Ticketmaster claimed that it provided its on-line customers with reasonable opportunity to decline the use of their personal information by event providers for marketing purposes, I am not persuaded this is the case.

[39] The only opt-out opportunity provided by Ticketmaster in connection with the event providers' use of personal information occurred *following* the ticket purchase, and required the customer to contact the event provider directly to request to remove their personal information from the event provider's marketing list.

[40] The customer must also work within a five minute time restriction to complete the purchase of tickets. That is, when a customer shops on-line and holds event tickets, no one else can purchase those tickets unless the customer releases them by not completing the order. Due to high demand, Ticketmaster has implemented a time limit during the ticket purchase process. If a customer exceeds the allotted time limit, the tickets held by the customer are released for others to purchase.

[41] Ticketmaster stated that the time restriction is intended to eliminate abuse of multiple and simultaneous ticket requests in acquiring the best ticket. Nonetheless, in my opinion, without having a clear ability to opt-out of secondary marketing purposes, the time restriction creates undue pressure on the customer to purchase the event tickets, perhaps at the expense of their privacy rights.

[42] I recognize that a Ticketmaster customer can register with the Organization's website and review the privacy policy without time restrictions. However, I think it is unlikely that a customer would think to read the Organization's 5-page privacy policy prior to proceeding with an on-line ticket purchase. Moreover, Ticketmaster's website does not suggest or direct customers to do this.

[43] I accept that Ticketmaster's business relationships and use of customers' personal information may be more complex than for other on-line retail organizations. However, at the time of the complaint, the Organization's privacy policy was over 3000 words in length and contained complex information which did not clearly explain how the customer's personal information was used by event providers, marketers and non ticketing affiliates. As such, the probability of a customer fully reading Ticketmaster's privacy policy was low. A more likely scenario is that customers immediately go on-line to purchase tickets and complete the sales transaction without fully reviewing Ticketmaster's privacy policy and its consent provisions.

[44] Ticketmaster's website did not provide a simple, easy to use, timely opportunity for customers to opt-out of secondary uses during the on-line ticket purchase and the Organization's privacy policy was difficult to view, use and understand.

[45] In this case, Ticketmaster's opt-out process did not allow an individual a reasonable opportunity to make an informed decision about their privacy rights nor did it offer customers a reasonable opportunity to opt-out. Therefore, I find that Ticketmaster contravened subsection 8(3)(a)(i) and (ii) of the Act.

VI. SUMMARY OF FINDINGS

[46] My findings in this matter are summarized as follows:

- Ticketmaster's purposes for collecting customer personal information over the Internet and the extent of personal information collected, for ticketing services to customers, are reasonable, in accordance with sections 11(1) and 11(2) of PIPA.
- Ticketmaster's on-line requirement that customers consent to their personal information being provided to event providers for the event providers' marketing purposes is beyond what is necessary for ticket sales transactions and therefore, contravened section 7(2) of PIPA.

- The Organization's on-line opt-out process did not allow a customer to make an informed decision about consent nor did it offer customers a reasonable opportunity to decline or object to the use or disclosure of their personal information for event providers' marketing purposes and therefore contravened subsection 8(3)(a)(i) and (ii) of PIPA.
- Ticketmaster's website privacy policy was found to be complex and ambiguous.

VII. RECOMMENDATIONS

[47] Given the above findings, I made the following recommendations to Ticketmaster:

1. Cease requiring customers to consent to the use of their personal information for marketing purposes, and make the necessary changes to Ticketmaster's website;
2. Provide on-line customers with a reasonable (i.e. identifiable and easy) opportunity to opt-out of the use of their personal information by event providers for marketing purposes;
3. Re-design agreements with event providers to ensure that they reflect appropriate use of customers' personal information;
4. Revise Ticketmaster's website privacy policy to allow easy navigation and comprehension by customers of the Organization's role in the ticketing process and its collection, use and disclosure of customers' personal information.

[48] Ticketmaster fully cooperated with this Office throughout this investigation and committed to implementing the recommendations in this report. On October 8, 2007, Ticketmaster launched, across Canada, its new on-line and telephone opt-in mechanism for event providers' marketing communications. This mechanism offers on-line and telephone customers the opportunity to opt-in to receiving marketing materials from event providers by checking a box during the on-line ticket purchase process. In conjunction with the launch of the opt-in mechanism, Ticketmaster posted its revised privacy policy as well as an easily navigable table of contents linking to the appropriate sections of the policy. The Complainant was satisfied by the outcome.

[49] This matter is considered resolved and is now closed.

IX. CONCLUSIONS

[50] Customers have a right to control what happens to their personal information - who gets it and how it is used. On-line retailers must ensure that they provide customers with an ability to decline the collection, use and disclosure of personal information particularly with respect to secondary/marketing purposes. Further, they must limit the amount and the type of information they collect, use or disclose and cannot require customer consent except for what is necessary to provide the product or service.

[51] Developing a comprehensive and easy to understand privacy policy is critical to building trust with on-line customers and can be used as a marketing tool as well as support for training and compliance within a business. It is an effective way to explain how a business will put personal information protection laws into effect with respect to the collection, use and disclosure of personal information.

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