

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDERS F2007-001, F2007-002, P2007-001

February 15, 2008

**THE CITY OF EDMONTON
EDMONTON POLICE SERVICE
EMU INC. (CARRYING ON BUSINESS AS CASH CONVERTERS
MILL WOODS)**

Case File Numbers 3561, 3562, P0363

Office URL: www.oipc.ab.ca

Summary: The Complainant complained to the Commissioner that a second-hand store had collected his personal information under a municipal bylaw and uploaded that information to a database maintained by Business Watch International (BWI), so that the personal information was available to the Edmonton Police Service (EPS).

Under a directive (the directive) of the City of Edmonton's (the City's) City Manager, pawnshops and second-hand stores must upload the personal information collected under Bylaw 13138 to a database maintained by Business Watch International (BWI).

The Commissioner found that the City did not have the authority to require second hand stores and pawnshops to upload the Complainant's personal information to the BWI database. The Commissioner found that the City had custody over the Complainant's personal information once it was uploaded to the BWI database. The Commissioner found that the *Personal Information Protection Act* does not apply to the information collected by pawnshops under the City Manager's directive, as the information is subject to the FOIP Act because it is in the custody of the City. The Commissioner found that the City has not taken reasonable steps to safeguard the Complainant's information, or that of other second-hand store or pawnshop clients from unauthorized access, collection, use, disclosure, or destruction. In addition, the Commissioner found that both the City and

EPS contravened sections 33 and 34 of the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) when the Complainant's personal information was uploaded to the BWI database.

The Commissioner ordered the City to destroy the Complainant's personal information and to take immediate steps to secure the personal information of pawnshop and second-hand store clients uploaded to the BWI database under the directive, that is in the physical custody of a pawnshop or second-hand store.

Statutes Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 2, 5, 15, 33, 34, 38, 40, 53, 65, 72; *Personal Information Protection Act* S.A. 2003, c. P-6.5 s. 4; *Interpretation Act* RSA 2000, c. I-8 ss. 1(1)(c), 10, 26(3); *Municipal Government Act* RSA 2000 c. M-26, ss. 7, 13; *Municipal Act* S.O. 2001, c. 24; *Municipal Freedom of Information and Privacy Protection Act* R.S.O. 1990, c. M-56, ss.1, 28; *Provincial Offences Procedures Act* RSA 2000 c. P-34, s. 1; *Police Act* R.S.A. 2000 c. P-17 s. 27; *Police Officers Collective Bargaining Act* R.S.A. 2000, c. P-18

Authorities Cited: **AB:** Order F2002-014, F2006-017 **BC:** Order F06-01 *British Columbia (Ministry of Energy, Mines and Petroleum Resources) (Re)* [2006] B.C.I.P.C.D. No. 2

Cases Cited: *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, [2006] 1 S.C.R. 140; *Cash Converters Canada v. Oshawa (City)*, 2007 ONCA 502;

I. BACKGROUND

[para 1] Municipal Bylaw 13138 requires pawnshops and second-hand stores in Edmonton to record the personal information of individuals who pawn or sell items. The bylaw also requires pawnshops and second-hand stores to "make this information available to a peace officer forthwith upon request". This bylaw has existed in various forms since 1913. The current bylaw authorizes the City Manager to determine the form and manner in which pawnshops and second-hand stores record information collected under the bylaw.

[para 2] Since July 1, 2005, the City Manager has, by letter, (the directive) required pawnshops and second-hand stores to upload the information collected from clients under the bylaw to a database maintained by Business Watch International (BWI), a private company located in Saskatchewan. The City, on behalf of EPS, entered into a contract with BWI for this purpose. EPS and police services in other jurisdictions have access to this database.

[para 3] On January 30, 2006, the Complainant made a complaint to my office that Emu Inc., carrying on business as Cash Converters (Mill Woods), (Cash Converters) had required him to provide an Alberta Driver's License, his social insurance number, date of birth, place of employment, home address, telephone number, height, weight, nationality and hair and eye color to complete a transaction in which he sold a DVD player. He was

told that providing this information was necessary to comply with the municipal bylaw and that the information would be uploaded to a database maintained by BWI, a private company located in Saskatchewan. The database would then be accessible to EPS.

[para 4] The Complainant questioned whether Cash Converters had authority to record his information, whether EPS had a right to collect his information, and whether the City had the right to require him to provide his personal information to the BWI database.

[para 5] The matter was scheduled for an oral inquiry, which took place from January 9 - 11, 2007.

[para 6] The City, EPS, BWI, Cash Converters and the Complainant participated in the oral inquiry and provided both initial written submissions and follow up submissions.

[para 7] Following the oral inquiry, the Ontario Court of Appeal issued its decision in *Cash Converters Canada v. Oshawa (City)*, 2007 ONCA 502. As the facts and issues in that case are similar to those before me, I decided to reconvene the inquiry as a written inquiry, and on July 13, 2007, I requested that the parties provide written submissions regarding the decision and the wording of section 13 of the *Municipal Government Act* RSA 2000 c. M-26, section 14 of the *Municipal Act* S.O. 2001, c. 24 and the *Municipal Freedom of Information and Privacy Protection Act* R.S.O. 1990, c. M-56. All the parties provided written submissions regarding the decision. I will address this issue under Issue F, which I have added.

[para 8] As the complaint relates to two public bodies under the FOIP Act and one organization under the *Personal Information and Protection of Privacy Act* (PIPA), my office has assigned three different file numbers to the complaint. However, given the interrelated nature of the issues, I have decided to write one decision.

II. RECORDS AT ISSUE

[para 9] There are no records at issue.

III. ISSUES

[para 10] The following issues are identified in the Notice of Inquiry dated June 28, 2006 for Request for Review #3561:

Issue A: Is the Complainant's personal information in the custody or under the control of the City for the purposes of the FOIP Act?

Issue B: Does the City have the authority to collect the Complainant's personal information, as provided by sections 33 and 34 of the FOIP Act?

Issue C: Does the City have the Authority to disclose the Complainant's personal information to the Edmonton Police Service, as provided by section 40(1) of the FOIP Act?

Issue D: Has the City protected the Complainant's personal information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or destruction, as provided by section 38 of the FOIP Act?

[para 11] The following issue was identified in the Notice of Inquiry dated June 29, 2006 for Request for Review #3562:

Issue E: Does the Edmonton Police Service have the authority to collect the Complainant's personal information, as provided by sections 33 and 34 of the FOIP Act?

[para 12] Following the release of the Ontario Court of Appeal's decision in *Converters Canada v. Oshawa (City)*, 2007 ONCA 502, I added the following issue:

Issue F: Is there a conflict between Municipal Bylaw 13138 and section 33 of the FOIP Act for the purposes of section 13 of the *Municipal Government Act*?

[para 13] The following issues were identified in the Notice of Inquiry dated June 29, 2006 for Case File P0363:

Issue G: Is the *Personal Information Protection Act* (PIPA) inapplicable to the Complainant's personal information because the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) applies, by virtue of section 4(2) of PIPA and / or section 4(3)(e) of PIPA?

Issue H: If PIPA nonetheless applies, the Commissioner will also consider the following issues:

- 1. Did the Organization have the authority to collect and disclose the Complainant's personal information without consent, as provided by section 14(b) and section 20(b) of the PIPA and section 5 of the Personal Information Protection Regulation?**
- 2. If the Organization did not have the authority to collect or disclose the complainant's personal information without consent, was the collection or disclosure in contravention of section 7(1) of PIPA, having regard to sections 8(2) and (3) of the PIPA?**
- 3. Did the Organization collect and disclose the Complainant's personal information for purposes that are reasonable, as required by section 11(1) and section 19(1) of PIPA respectively?**

- 4. Did the Organization collect and disclose the Complainant’s personal information only to the extent that it is reasonable for meeting the purposes for which the information was collected and disclosed, as provided by section 11(2) and section 19(2) of PIPA?**

IV. DISCUSSION OF ISSUES

Preliminary Questions

[para 14] I will address two preliminary questions, as answering these questions will assist me to answer the issues identified for review.

1. Does Bylaw 13138 authorize the City Manager to require pawnshops and second-hand stores to upload personal information of clients to a database?
2. Does Bylaw 13138 authorize EPS to access such a database?

[para 15] Section 7 of the *Municipal Government Act* authorizes municipalities to make bylaws. The City of Edmonton has enacted Bylaw 13138, which applies to pawn shops and second-hand stores, among other businesses, under this authority. Through this bylaw, the City requires pawnshops and second-hand stores to collect personal information from clients when items are pawned or sold. The City Manager’s directive requires pawnshops and second-hand stores to upload this information to an electronic database administered by BWI, a company based in Saskatchewan. EPS has access to the database. In order to comply with the directive, a pawnshop or second-hand store must have a computer, internet access, and BWI software.

[para 16] Bylaw 13138 states, in part:

- 33 *Whenever goods are received and held as security for an advance of money the following information shall be accurately recorded:*
- (a) *the date and time the goods were received;*
 - (b) *the full name, date of birth, residential address, telephone number, gender, eye and hair colour of the Person delivering the goods;*
 - (c) *details from at least 2 pieces of identification provided by the Person delivering the goods, at least one of which must have a photograph of the Person;*
 - (d) *a complete description of each good including where available, the make, model and serial number of the good, the manufacturers name and any distinguishing marks;*

- (e) *the amount of money advanced in respect of each good; and*
- (f) *the name of the Person working in the Pawn Shop that conducted the transaction...*

40 *The information required to be recorded by this Part:*

- (a) *shall be recorded in a form and manner acceptable to the City Manager; and*
- (b) *shall be made available to a Peace Officer forthwith upon request.*

40.2 *Whenever previously owned goods are acquired or received by a Second Hand Store for re-sale, the following information shall be accurately recorded:*

- (a) *the date and time the goods are acquired or received;*
- (b) *the full name, date of birth, residential address, telephone number, gender, eye and hair colour of the person from whom the goods are acquired or received;*
- (c) *details from at least two pieces of identification provided by the Person from whom the goods are acquired at least one of which must have a photograph of the Person;*
- (d) *a complete description of each good including, where available, the make, model and serial number of the good, the manufacturer's name and any distinguishing marks;*
- (e) *the amount of money paid in respect of each good; and*
- (f) *the name of the Person working in the Second Hand Store that conducted the transaction.*

40.8 *The information required to be recorded by this Part:*

- (a) *shall be recorded in a form and manner acceptable to the City Manager; and*
- (b) *shall be made available to a Peace Officer forthwith upon request.*

[para 17] EPS argues that the City Manager's authority to prescribe the form in which pawnshops and second-hand stores record personal information collected under the bylaw amounts to authority to require the information to be stored in an electronic format

that will allow for automated reporting to the EPS. Essentially, EPS argues that the bylaw creates authority to require pawnshops and second-hand stores to submit client's personal information to an electronic database where it may be accessed and used by peace officers, because the bylaw allows the City Manager to establish the form in which information is recorded, and requires pawnshops and second-hand stores to make this information available to a peace officer on request.

[para 18] The City notes:

A review of the licensing bylaws since 1913 indicates that personal information collected and turned over to police by pawnshops has been required in all licensing bylaws.

The City also provided copies of historic bylaws to support this position and affidavit evidence from the City Manager to explain new pawnshop and second-hand store licensing requirements. The affidavit evidence explains that the City Manager may establish the form in which information is collected. However, I note that the bylaw actually states that information required to be recorded "shall be recorded in a form and manner acceptable to the City Manager".

[para 19] The Complainant argues that Bylaw 13138 does not provide sufficient authority for the City to require pawnshops and second-hand stores to submit clients' personal information to an electronic database for three reasons:

First, the effect of the Letter Directive is that all personal information recorded by the Stores is transmitted each day, as opposed to merely being made available to a peace officer upon request.

Second, all personal information is transmitted to a for-profit company, Business Watch International ("BWI") as opposed to a Peace Officer. Section 2(g) of the By-Law defines a Peace Officer as a peace officer as defined in the Provincial Offences Procedure Act RSA 2000, c. P-34. The latter Act does not include BWI or any other for-profit companies within the definition of peace officer(s).

Third, the Letter Directive requires that the personal information be transmitted whether or not there is any request by a peace officer or actual investigation.

[para 20] The Complainant agrees that the bylaw empowers the City Manager to determine the form and manner in which the information is to be recorded, but argues that it does not allow the City Manager or any other person to expand the obligations of pawnshops or second-hand stores under the bylaw.

[para 21] I agree with the Complainant's argument that the bylaw does not provide the necessary authority for the City to require a pawnshop or second-hand store to disclose information collected under the bylaw to an entity other than a peace officer, which is in effect what happens when a pawnshop or second-hand store uploads customer information to the BWI database. I also agree that the phrase "make available to a peace officer forthwith upon request" does not support an interpretation that information is to be disclosed to subscribing police services automatically and routinely.

[para 22] Sections 40 and 40.8 of the bylaw are clearly intended to address the way in which information is to be recorded, and when that information is to be made available to a peace officer. I do not read sections 40(a) or 40.8 of the bylaw as providing any authority to the City Manager other than the authority to determine the form and manner in which information is recorded. Nevertheless, the City Manager has informed pawnshops and second-hand stores (the directive) that they must send information electronically to a database maintained by a private company based in Saskatchewan. This policy may have developed because the City Manager views his jurisdiction as encompassing the form and manner of collection of information. However, the bylaw makes it clear that his jurisdiction is limited to establishing the manner in which collected information is recorded.

[para 23] The *Concise Oxford Dictionary* Ninth Edition provides the following definition of “record”: “set down in writing or some other permanent form for later reference, esp. as an official record.” I find that there is nothing in the context of the bylaw to indicate that the municipal council intended anything other than “record”, as that word is generally understood, when it enacted this provision. On the contrary, the fact that the record must be “made available to a peace officer *forthwith* upon request” would suggest that the municipal council did not intend for a pawnshop or second-hand store to remove recorded information from the premises when it enacted the bylaw. It should be remembered that when the bylaw was originally enacted, paper records were the standard. While I agree that the bylaw enables the City Manager to require information to be recorded electronically, I do not agree that this authority includes requiring information to be uploaded to a database established and maintained by a business under contract to the City.

[para 24] Under the directive, pawnshops and second-hand stores are required to make available information collected under sections 33 and 40.2 of the bylaw to the police service as a whole, without a request by a peace officer. This requirement is much broader than that contemplated by sections 40 and 40.8 of the bylaw, under which a pawnshop or second-hand store is under no obligation to provide information collected under sections 33 and 40.2 to a peace officer until a request is made under section 40(b) or 40.8(b).

[para 25] In *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, [2006] 1 S.C.R. 140, Bastarache J., writing for the majority of the Supreme Court of Canada, noted:

Few areas of our lives are now untouched by regulation. Telephone, rail, airline, trucking, foreign investment, insurance, capital markets, broadcasting licences and content, banking, food, drug and safety standards, are just a few of the objects of public regulations in Canada: M. J. Trebilcock, “The Consumer Interest and Regulatory Reform”, in G. B. Doern, ed., *The Regulatory Process in Canada* (1978), 94. Discretion is central to the regulatory agency policy process, but this discretion will vary from one administrative body to another (see C. L. Brown-John, *Canadian Regulatory Agencies: Quis custodiet ipsos custodes?* (1981), at p. 29). More importantly, in exercising this discretion, statutory bodies must respect the confines of their jurisdiction: they cannot trespass in areas where the legislature has not assigned them authority (see D. J. Mullan, *Administrative Law* (2001), at pp. 9-10).

In other words, while statutory bodies such as the City, or statutory office holders, such as the City Manager, may exercise discretion within a legislative framework, they cannot exercise discretion outside that framework. As D. J. Mullan notes in *Administrative Law* (2003) at p.953, “Administrative action that is not authorized by law is of no legal force or effect.”

[para 26] In the present case, the City Manager is given authority under the bylaw to determine how pawnshops and second-hand stores will record customer information. However, the City Manager has instead ordered pawnshops and second-hand stores to upload information to the BWI database. I do not find that uploading information to a database administered by a private company under a contract with the City is the same thing as recording personal information, nor do I find that uploading information is implicit in the authority to determine how information is recorded. Consequently, I find that the City Manager’s requirement that pawnshops and second-hand stores upload information to the BWI database exceeds the City Manager’s jurisdiction under the bylaw.

[para 27] For these reasons, I answer both questions in the negative.

Case File Number 3561

Issue A: Is the Complainant’s personal information in the custody or under the control of the City for the purposes of the FOIP Act?

[para 28] There is no dispute that the Complainant’s information and the information of other individuals who have pawned or sold items since July 2005, are currently stored in a database maintained by BWI and accessible to subscribing police services.

[para 29] The City of Edmonton argues that it does not possess the Complainant’s personal information and therefore does not have custody over it.

[para 30] EPS argues that the City does not have custody or control over the database or the Complainant’s personal information. It argues that pawnshops and second-hand stores are subject to PIPA when they transmit information to the BWI database and that information downloaded from the database by EPS is subject to the FOIP Act. It contends that finding that the FOIP Act applies to information collected by pawnshops and second-hand stores under sections 33 and 40.2 of Bylaw 13138 would result in a complex and confusing privacy scheme.

[para 31] The Complainant argues that the City has control over the Complainant’s personal information because the information was collected under the direction of the City, pursuant to a municipal bylaw, and entered into the database pursuant to a directive issued by the City.

[para 32] Section 4(1) of the FOIP Act explains when it applies to records. It states in part:

4(1) This Act applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to the following...

For the FOIP Act to apply to a record, it need only be established that a public body has custody or control of the record.

[para 33] In Order F2002-014, I said:

Under the Act, custody and control are distinct concepts. “Custody” refers to the physical possession of a record, while “control” refers to the authority of a public body to manage, even partially, what is done with a record. For example, the right to demand possession of a record, or to authorize or forbid access to a record, points to a public body having control of a record.

A public body could have both custody and control of a record. It could have custody, but not control, of a record. Lastly, it could have control, but not custody, of a record. If a public body has either custody or control of a record, that record is subject to the Act.

[para 34] The City entered a contract for services with BWI. As part of that contract, BWI maintains a database of information collected by pawnshops and second-hand stores and makes that information available for download to EPS. Section 1(e) of the Act explains who is an employee of a public body. It states:

1 In this Act,

(e) “employee”, in relation to a public body, includes a person who performs a service for the public body as an appointee, volunteer or student or under a contract or agency relationship with the public body...

While the City argues that it entered the contract on behalf of EPS, the fact remains that the City is a party to the contract and EPS is not. As a result, BWI is an employee of the City within the meaning of section 1(e) of the FOIP Act. For this reason, I find that the personal information in the custody of BWI is also in the custody of the City.

[para 35] Consequently, I find that the Complainant’s personal information is in the custody of the City within the meaning of the FOIP Act.

Issue B: Does the City of Edmonton have the authority to collect the Complainant’s personal information, as provided by sections 33 and 34 of the FOIP Act?

Section 33

[para 36] The City did not provide submissions on this issue, as it takes the position that it does not have custody or control over the database, and consequently, does not

have control over personal information collected in the database. From this argument, I infer that it takes the position that it has not collected the Complainant's information.

[para 37] The Complainant argues that the City does not have the authority to collect the Complainant's personal information under sections 33 and 34 of the FOIP Act as the collection is not authorized by an enactment. The Complainant takes the position that the bylaw does not authorize information to be entered into a database and that the City lacks the authority to delegate its bylaw making authority to the City Manager.

[para 38] EPS argues that under section 1(3) of the FOIP Regulation, a regulation is included in the definition of "an enactment of Alberta" and that the *Interpretation Act*, which applies to the FOIP Act, defines "regulation" when that term is used in an enactment, as including a bylaw. In its follow up submissions, EPS suggested that the information required by Bylaw 13138 is not considered "sensitive personal information" within the meaning of the FOIP Act. The FOIP Act does not refer to "sensitive personal information". Rather, it contains provisions addressing situations when disclosure of personal information is an unreasonable invasion of personal privacy. I understand EPS's argument to mean that disclosure of the personal information collected under the bylaw is not an invasion of personal privacy, and even if it were, there would be few consequences in the event of a security breach.

[para 39] I find that the information required by the bylaw -- full name, date of birth, residential address, telephone number, gender, eye and hair colour of the Person delivering the goods; details from at least 2 pieces of identification provided by the Person delivering the goods, and at least one of which must have a photograph of the Person -- is personal information about an individual for the purposes of section 1(n) of the FOIP Act. In addition, as information gathered under the bylaw may include credit card and social insurance numbers, and driver's license and passport information, disclosing this personal information would, in most cases, amount to an unreasonable invasion of personal privacy, unless a provision of section 40 of the FOIP Act applies. In addition, given the sensitivity of the information, there could be far reaching consequences in the event of a security breach.

[para 40] Section 33 of the Act prohibits the collection of personal information except in certain circumstances. It states:

- 33 *No personal information may be collected by or for a public body unless*
- (a) *the collection of that information is expressly authorized by an enactment of Alberta or Canada,*
 - (b) *that information is collected for the purposes of law enforcement,*
or
 - (c) *that information relates directly to and is necessary for an operating program or activity of the public body.*

[para 41] Under the bylaw, pawnshops and second-hand stores are required to collect and maintain custody of information gathered under sections 33 and 40.2 of the

bylaw. Under the directive, these businesses are required to upload the personal information of customers to BWI, which in turn maintains custody of it as required by its contract with the City. Once it is uploaded to the database, subscribing police services collect this information.

[para 42] I note that section 33 of the FOIP Act prohibits collection “for” a public body as well as “by” a public body. In my view, this provision prohibits collection at the direction of a public body unless the conditions in 33 (a), (b), or (c) are met. While the City takes the position that it has not collected the Complainant’s personal information, I find that the City collects personal information when pawnshops and second-hand stores upload customer information to the BWI database, as BWI is an employee of the City under the FOIP Act. In the current system, the City effectively takes custody of personal information when a pawnshop or second-hand store uploads the information to the BWI database. Consequently I find that the City has collected the Complainant’s personal information within the meaning of section 33.

[para 43] I do not find that collection under the City Manager’s directive is expressly authorized by an enactment of Canada or Alberta for the purposes of section 33(a). While I agree that a bylaw is an enactment for the purposes of the Act, the authority for collection of information gathered under sections 33 and 40.2 of the bylaw into the BWI database does not stem from a bylaw, but rather from a directive of the City Manager to pawnshop and second-hand stores. The directive is not an enactment of Alberta or Canada under the FOIP Act, and therefore, the City cannot rely on section 33(a) of the FOIP Act to authorize the collection of information in the BWI database.

[para 44] I do not find that the collection in question is for the purpose of law enforcement as permitted by 33(b) of the FOIP Act. The affidavit evidence of the City is that the information is uploaded to the database to meet a reporting requirement imposed on pawnshops and second-hand stores. I do not find that a reporting requirement is a law enforcement purpose under section 33(b) of the FOIP Act.

[para 45] The City’s position is that it does not have custody or control of the personal information and has not collected it. Thus, by the City’s own admission, it does not use the information collected for any municipal program or activity. As a result, I infer that the information collected is therefore unnecessary for an operating program or activity of the City, as provided by section 33(c) of the FOIP Act.

[para 46] For these reasons, I find that the City collected personal information contrary to section 33 of the FOIP Act when the Complainant’s personal information, and that of other customers, was uploaded to the BWI database at the City’s direction.

Section 34

[para 47] Section 34 prohibits a Public Body from collecting personal information indirectly except in certain circumstances. It states in part:

34(1) A public body must collect personal information directly from the individual the information is about unless

- (a) another method of collection is authorized by
 - (i) that individual,*
 - (ii) another Act or a regulation under another Act, or*
 - (iii) the Commissioner under section 53(1)(h) of this Act,**
- (b) the information may be disclosed to the public body under Division 2 of this Part,*
- (c) the information is collected in a health or safety emergency where
 - (i) the individual is not able to provide the information directly, or*
 - (ii) direct collection could reasonably be expected to endanger the mental or physical health or safety of the individual or another person,**
- (d) the information concerns an individual who is designated as a person to be contacted in an emergency or other specified circumstances,*
- (e) the information is collected for the purpose of determining suitability for an honour or award, including an honorary degree, scholarship, prize or bursary,*
- (f) the information is collected from published or other public sources for the purpose of fund-raising,*
- (g) the information is collected for the purpose of law enforcement,*
- (h) the information is collected for the purpose of collecting a fine or a debt owed to the Government of Alberta or a public body,*
- (i) the information concerns the history, release or supervision of an individual under the control or supervision of a correctional authority,*
- (j) the information is collected for use in the provision of legal services to the Government of Alberta or a public body,*
- (k) the information is necessary
 - (i) to determine the eligibility of an individual to participate in a program of or receive a benefit, product or service from the Government of Alberta or a public body and is collected in the course of processing an application made by or on behalf of the individual the information is about, or*
 - (ii) to verify the eligibility of an individual who is participating in a program of or receiving a benefit, product or service from the Government of Alberta or a public body and is collected for that purpose,**
- (l) the information is collected for the purpose of informing the Public Trustee or the Public Guardian about clients or potential clients,*

- (m) *the information is collected for the purpose of enforcing a maintenance order under the Maintenance Enforcement Act,*
- (n) *the information is collected for the purpose of managing or administering personnel of the Government of Alberta or the public body, or*
- (o) *the information is collected for the purpose of assisting in researching or validating the claims, disputes or grievances of aboriginal people.*

[para 48] Both the directive and the bylaw require pawnshops and second-hand stores to collect personal information from clients who pawn or sell items. The question is whether the City collected the Complainant's information directly or indirectly, and, if indirectly, whether this practice is authorized under section 34.

[para 49] I have found that the directive is not authorized under the bylaw. Consequently, the requirement that a pawnshop or a second-hand store upload personal information to the BWI database is without authority and results in BWI, an employee of the City, collecting personal information without authority. Furthermore, since BWI is not collecting personal information directly from the person the information is about, but from the pawnshop or second-hand store, the City is required to establish BWI's authority to collect indirectly. A directive that has no authority in law cannot establish authority to collect indirectly under section 34(1)(a)(ii).

[para 50] I do not find that any of the other provisions of section 34 apply to enable the City to collect information indirectly. In any event, the City did not provide any argument in relation to the provisions of section 34.

[para 51] For these reasons, I find that the City has collected personal information through the directive contrary to both sections 33 and 34 of the FOIP Act.

Issue C: Does the City of Edmonton have the Authority to disclose the Complainant's personal information to the Edmonton Police Service, as provided by section 40(1) of the FOIP Act?

[para 52] Section 40 of the FOIP Act sets out the situations in which a Public Body may disclose personal information. It states:

- 40(1) A public body may disclose personal information only*
- (a) *in accordance with Part 1,*
 - (b) *if the disclosure would not be an unreasonable invasion of a third party's personal privacy under section 17,*
 - (c) *for the purpose for which the information was collected or compiled or for a use consistent with that purpose,*
 - (d) *if the individual the information is about has identified the information and consented, in the prescribed manner, to the disclosure,*

- (e) *for the purpose of complying with an enactment of Alberta or Canada or with a treaty, arrangement or agreement made under an enactment of Alberta or Canada,*
- (f) *for any purpose in accordance with an enactment of Alberta or Canada that authorizes or requires the disclosure,*
- (g) *for the purpose of complying with a subpoena, warrant or order issued or made by a court, person or body having jurisdiction in Alberta to compel the production of information or with a rule of court binding in Alberta that relates to the production of information,*
- (h) *to an officer or employee of the public body or to a member of the Executive Council, if the information is necessary for the performance of the duties of the officer, employee or member,*
- (i) *to an officer or employee of a public body or to a member of the Executive Council, if the disclosure is necessary for the delivery of a common or integrated program or service and for the performance of the duties of the officer or employee or member to whom the information is disclosed,*
- (j) *for the purpose of enforcing a legal right that the Government of Alberta or a public body has against any person,*
- (k) *for the purpose of*
 - (i) *collecting a fine or debt owing by an individual to the Government of Alberta or to a public body, or to an assignee of either of them, or*
 - (ii) *making a payment owing by the Government of Alberta or by a public body to an individual,*
- (l) *for the purpose of determining or verifying an individual's suitability or eligibility for a program or benefit,*
- (m) *to the Auditor General or any other prescribed person or body for audit purposes,*
- (n) *to a member of the Legislative Assembly who has been requested by the individual the information is about to assist in resolving a problem,*
- (o) *to a representative of a bargaining agent who has been authorized in writing by the employee the information is about to make an inquiry,*
- (p) *to the Provincial Archives of Alberta or to the archives of a public body for permanent preservation,*
- (q) *to a public body or a law enforcement agency in Canada to assist in an investigation*
 - (i) *undertaken with a view to a law enforcement proceeding,*
or
 - (ii) *from which a law enforcement proceeding is likely to result,*
- (r) *if the public body is a law enforcement agency and the information is disclosed*

- (i) *to another law enforcement agency in Canada, or*
- (ii) *to a law enforcement agency in a foreign country under an arrangement, written agreement, treaty or legislative authority,*
- (s) *so that the spouse or adult interdependent partner, relative or friend of an injured, ill or deceased individual may be contacted,*
- (t) *in accordance with section 42 or 43,*
- (u) *to an expert for the purposes of section 18(2),*
- (v) *for use in a proceeding before a court or quasi-judicial body to which the Government of Alberta or a public body is a party,*
- (w) *when disclosure is by the Minister of Justice and Attorney General or an agent or lawyer of the Minister of Justice and Attorney General to a place of lawful detention,*
- (x) *for the purpose of managing or administering personnel of the Government of Alberta or the public body,*
- (y) *to the Director of Maintenance Enforcement for the purpose of enforcing a maintenance order under the Maintenance Enforcement Act,*
- (z) *to an officer of the Legislature, if the information is necessary for the performance of the duties of that officer,*
- (aa) *for the purpose of supervising an individual under the control or supervision of a correctional authority,*
- (bb) *when the information is available to the public,*
- (bb.1) *if the personal information is information of a type routinely disclosed in a business or professional context and the disclosure*
 - (i) *is limited to an individual's name and business contact information, including business title, address, telephone number, facsimile number and e-mail address, and*
 - (ii) *does not reveal other personal information about the individual or personal information about another individual,*
- (cc) *to the surviving spouse or adult interdependent partner or a relative of a deceased individual if, in the opinion of the head of the public body, the disclosure is not an unreasonable invasion of the deceased's personal privacy,*
- (dd) *to a lawyer or student-at-law acting for an inmate under the control or supervision of a correctional authority,*
- (ee) *if the head of the public body believes, on reasonable grounds, that the disclosure will avert or minimize an imminent danger to the health or safety of any person, or*
- (ff) *to the Administrator of the Motor Vehicle Accident Claims Act or to an agent or lawyer of the Administrator for the purpose of dealing with claims under that Act.*

(2) Notwithstanding subsection (1), a post-secondary educational body may disclose personal information in its alumni records for the purpose of

fund-raising activities of the post-secondary educational body if the post-secondary educational body and the person to whom the information is disclosed have entered into a written agreement

- (a) *that allows individuals a right of access to personal information that is disclosed about them under this subsection, and*
- (b) *that provides that the person to whom the information is disclosed must discontinue using the personal information of any individual who so requests.*

(3) Notwithstanding subsection (1), a post-secondary educational body may, for the purpose of assisting students in selecting courses, disclose teaching and course evaluations that were completed by students.

(4) A public body may disclose personal information only to the extent necessary to enable the public body to carry out the purposes described in subsections (1), (2) and (3) in a reasonable manner.

[para 53] The City and EPS provided no evidence or argument on this point, as the position of both public bodies is that the City has neither custody nor control over pawnshop and second-hand store clients' personal information. The Complainant argues that section 40 is intended to limit disclosure of personal information contained in databases such as the BWI database, to police.

[para 54] Through its contract with BWI, the City directs when and to whom BWI may disclose personal information from the database. Consequently, I find that any disclosure made by BWI in accordance with the directive is a disclosure of the City.

[para 55] The bylaw requires pawnshops and second-hand stores to make information collected under sections 33 and 40.2 available to a peace officer forthwith upon request. However, as noted above, I do not find that this is the same thing as authorizing a peace officer to download information from a database without first making a request to a pawnshop or second-hand store. The directive is without legal authority and is not an enactment. I therefore do not find that an enactment of Alberta authorizes the City to disclose personal information obtained from pawnshop or second-hand store clients to EPS or to peace officers of other jurisdictions through the BWI database.

[para 56] I have reviewed the provisions of section 40 and do not find, based on the arguments provided and on the evidence before me, that it authorizes the City to disclose the personal information from pawnshop or second-hand store clients, including the Complainant's personal information, to EPS or to peace officers in other jurisdictions. As I find that the bylaw does not authorize disclosure by the City to EPS or other police services or subscribers to the BWI database, and, as the evidence does not establish that any other provision of section 40 authorizes such disclosure, that the City does not have authority to disclose the Complainant's personal information under section 40.

Issue D: Has the City of Edmonton protected the Complainant's personal information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or destruction, as provided by section 38 of the FOIP Act?

[para 57] The City provided no evidence that it has taken steps to protect the Complainant's personal information or made reasonable security arrangements and made no submissions on this issue.

[para 58] BWI provided direct evidence from its President and CEO, explaining the steps taken to secure the database.

[para 59] The Complainant argues that the City has taken no steps to ensure the security of personal information that may be located in pawnshops, second-hand stores or police services. He comments that he is unable to evaluate the security measures taken by BWI without the ability to cross examine employees of BWI.

[para 60] I have already found that information collected under the directive is collected at the direction of the City by BWI, an employee of the City. Consequently, I found that the City has custody of the information. Section 38 imposes a duty on the head of a public body to ensure the security of personal information. It states:

38 The head of a public body must protect personal information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or destruction.

[para 61] For the reasons discussed under Issue H, I find that PIPA does not apply to the information uploaded to the BWI database by pawnshops and second-hand stores under the directive. When a public body has custody or control over personal information, this information is excluded from the application of PIPA even if it is in the custody of an organization. In such a situation, the public body has a duty to safeguard the information under the FOIP Act.

[para 62] Under the system established by the directive, in which information is collected by a pawnshop or second-hand store and uploaded to a database, the City is under a duty to ensure the security of personal information collected by these businesses and uploaded to the database and to make security arrangements to protect against the risks identified in section 38.

[para 63] The City bears the burden of proof to establish that it has taken reasonable security measures to protect the personal information that has been collected for it, as it is in the best position to provide evidence of the steps it has taken. The City provided no evidence in relation to security systems in place at BWI or at pawnshops, second-hand stores, or police services with access to the BWI database. It argues that it does not collect the information and has no access to the BWI database. From these submissions

and from the evidence, I infer that the City has taken no steps to protect personal information collected under the directive.

[para 64] I disagree with the position of EPS that a finding that PIPA does not apply to the personal information uploaded to the BWI database would result in a confusing statutory scheme. PIPA is clear that once a public body has control or custody of personal information, PIPA does not apply to that information. Instead, I find that any difficulty arising from the bylaw and the directive is the result of failing to consider the consequences under PIPA and the FOIP Act when issuing a directive without legal authority.

[para 65] I am aware that a consequence of this finding is that any obligations respecting the personal information of customers under PIPA do not apply to the information in the custody of pawnshops and second-hand stores that they upload to the databases. As a result, the City bears the statutory duty to safeguard personal information that BWI collects under the directive, even though that personal information may be physically located in a pawnshop or second-hand store or in the BWI database.

[para 66] Section 2(b) of the FOIP Act states that a purpose of the legislature in enacting the FOIP Act is:

to control the manner in which a public body may collect personal information from individuals, to control the use that a public body may make of that information and to control the disclosure of that information.

A finding that the City has a duty under the FOIP Act to safeguard information collected under the bylaw is consistent with this purpose.

[para 67] It is also important to note that PIPA defers to the FOIP Act. Not only do sections 4(2) and 4(3)(e) make it clear that PIPA does not apply to information that is subject to the FOIP Act, but section 4(6) states that where there is a conflict between the two statutes, the FOIP Act prevails. These provisions indicate a clear legislative intent that public bodies are to be responsible for information in their custody and under their control even when that information is in the custody of an organization.

[para 68] Organizations may continue to have duties in tort or be subject to the *Criminal Code* in relation to the personal information; however, the City bears the statutory duty to safeguard the personal information collected under the directive.

[para 69] I agree with the following statement from Order F06-01 *British Columbia (Ministry of Energy, Mines and Petroleum Resources) (Re)* [2006] B.C.I.P.C.D. No. 2:

Outsourcing is not inconsistent with FOIPPA. It is contemplated by the extended definition of “employee”... and by section 33(f) which permits disclosure to an “employee” of personal information in the custody or under the control of a public body where the disclosure is necessary for the performance of the employee’s duties. The fact that outsourcing is contemplated FOIPPA does not, however, authorize a public body to do so in circumstances that would reduce security

arrangements for personal information below those required of the public body directly. ...I conclude that a public body cannot contract out of its obligations under the Act or immunize records from its control under the Act, by contracting out a function and labeling it “independent” or failing to enter into adequate contractual arrangements to ensure compliance with the Act.

[para 70] However, I am satisfied that BWI has, as an employee of the City, taken reasonable steps to secure the database. BWI provided direct evidence explaining the security measures, both physical and electronic, in place to protect the database. These include: a personnel security policy governing access to data by BWI employees, a Firebox firewall from WatchGuard Corporation, 128 bit encryption, 4 layers of logs recording system information which are monitored by IT personnel 24 hours a day, and secure hosting by SaskTel Data Centre. In addition, BWI provided information about the physical location of the Data Centre, which is a dedicated multi-floor site-hardened and windowless structure with a fire rating of 1.5 hours for walls and doors. Mechanical rooms, electronic control units and the power supply units are separate from the main server room. Bonded security personnel are on site and entries are electronically secured. The perimeter and corridors are monitored by closed circuit cameras and motion detectors. Access to the Data Centre requires biometric scanners and key card access. In addition, vulnerability assessments are conducted on a regular basis to ensure protection of the Data Centre infrastructure and system.

[para 71] BWI also provided an explanation of its Security Policy as it relates to the pawnshop and secondhand store client database. The policy applies to information stored on databases, computers, transmitted across internal and public networks, on paper, held on film or microfiche, presented on slides, overhead projectors, or with visual and audio media, spoken during telephone calls and meetings, and stored on removable and fixed media.

[para 72] While I am satisfied that reasonable steps have been taken to secure the BWI database, the evidence of the president of BWI raises other concerns. He notes in his statement:

For stores with their own Point of Sale (POS) (pawn application used to run their business), BWI has published an upload file format so they can upload the transactions at the end of the day. This is what Cash Converters does on a daily basis to get the information to BWI. Our understanding is that a copy of the information remains on the Cash Converter’s POS system, but BWI has no way to confirm this as we have no control over, or access to their POS system.

[para 73] No evidence has been provided as to the security of the Complainant’s personal information physically located at Cash Converters. However, as the City has custody of the information, the FOIP Act requires the City to take reasonable measures to ensure its security.

[para 74] For these reasons, I find that the City has a duty to protect the personal information, but has not established that it has taken appropriate steps to protect the Complainant’s personal information, or that of other pawnshop or second-hand store clients. Specifically, it has not established that it has taken any steps, reasonable or otherwise, to ensure the security of personal information located in Cash Converters or

other pawnshops or second-hand stores against unauthorized access, use, disclosure or destruction.

Case File Number 3562

Issue E: Does the Edmonton Police Service have the authority to collect the Complainant’s personal information, as provided by sections 33 and 34 of the FOIP Act?

Section 33

[para 75] Under sections 1(i)(x)(B) and 1(j) of the FOIP Act, EPS is a local public body. Consequently the FOIP Act applies to EPS. However, EPS is not a peace officer within the meaning of Bylaw 13138. Under the scheme established by the City Manager’s directive, EPS as a public body collects information from the BWI database.

[para 76] EPS argues that Bylaw 13138 authorizes EPS to collect the Complainant’s personal information, and that of other pawnshop and second-hand store clients. In addition, EPS argues that it collects this information to identify and recover stolen goods and to assist in the apprehension of individuals engaged in criminal activity, which are law enforcement purposes.

[para 77] The Complainant argues that when EPS collects the information gathered under the directive, it is the result of a disclosure by the City that is contrary to section 40. The Complainant also argues that EPS does not collect the information in question for a law enforcement purpose, as it collects information for reasons other than those listed under section 1(h) of the FOIP Act.

[para 78] As discussed above, I find that Bylaw 13138 does not contemplate the creation of a database accessible to clients of BWI, such as EPS. As a result, I find that any collection by EPS of the information in the BWI database is not authorized by an enactment as required by section 33(a) of the FOIP Act.

[para 79] EPS provided its reasons for collecting personal information in general terms but provided no evidence that collecting the Complainant’s personal information would assist EPS in achieving its law enforcement objectives under section 33(b).

[para 80] It is important to consider the meaning of “personal information” under the FOIP Act:

- 1(n) *“personal information” means recorded information about an identifiable individual, including*
 - (i) *the individual’s name, home or business address or home or business telephone number,*
 - (ii) *the individual’s race, national or ethnic origin, colour or religious or political beliefs or associations,*

- (iii) *the individual's age, sex, marital status or family status,*
- (iv) *an identifying number, symbol or other particular assigned to the individual,*
- (v) *the individual's fingerprints, other biometric information, blood type, genetic information or inheritable characteristics,*
- (vi) *information about the individual's health and health care history, including information about a physical or mental disability,*
- (vii) *information about the individual's educational, financial, employment or criminal history, including criminal records where a pardon has been given,*
- (viii) *anyone else's opinions about the individual, and*
- (ix) *the individual's personal views or opinions, except if they are about someone else;*

[para 81] Personal information under the FOIP Act is about an individual and not a class of people generally. In addition, individuals are given the right under section 65(3) of the FOIP Act to complain that their own personal information has been collected, used or disclosed in contravention of the FOIP Act, as the Complainant has done. To defend against such a complaint, a public body must establish that collecting the individual's information serves a law enforcement purpose.

[para 82] In *Cash Converters Canada Inc. v. Oshawa (City)*, 2007 ONCA 502 the Ontario Court of Appeal said:

Section 28(2) also allows personal information to be collected on behalf of an institution if the information is "used for the purposes of law enforcement". Of significant concern in this case is the wholesale transmission to the police of a significant amount of personal information about individuals. This transmission occurs before there is any basis to suspect that the goods that were sold to the second-hand dealer were stolen and is made with no limit as to its use by the police or by those to whom the police may share the information. Although some of the information collected may ultimately be used for law enforcement, the purpose of the by-law and its intent in obliging vendors of second hand goods to disclose so much personal information and transmitting all of it to the police is for consumer protection and not law enforcement.

In my view, the same analysis holds true for EPS' collection of pawnshop and second-hand store clients' personal information. Through its access to the database, EPS collects this information regardless of whether there is a law enforcement need for it. Therefore it cannot be said that it collects this information for a law enforcement purpose.

[para 83] As the Complainant notes, section 1(h) of the FOIP Act defines law enforcement. It states:

- 1(h) "law enforcement" means*
 - (i) policing, including criminal intelligence operations,*
 - (ii) a police, security or administrative investigation, including the complaint giving rise to the investigation, that leads or could lead to a penalty or sanction, including a penalty or sanction imposed by the body conducting the investigation*

- or by another body to which the results of the investigation are referred, or*
- (iii) *proceedings that lead or could lead to a penalty or sanction, including a penalty or sanction imposed by the body conducting the proceedings or by another body to which the results of the proceedings are referred;*

[para 84] I do not find that the Complainant's information was collected for the purposes of policing, an investigation, or proceedings leading to penalty or sanction. Consequently, I find that the evidence does not establish that EPS collected the complainant's personal information for a law enforcement purpose within the meaning of the FOIP Act.

[para 85] EPS argues that its collection is authorized pursuant to section 33(c) as it collects information for the purposes of law enforcement, which it contends is an operating program or activity of EPS. I have already found that EPS does not collect the personal information of pawnshop and second-hand store clients for law enforcement purposes. In addition, I do not agree that the general function of a public body is the same thing as an operating program or activity of the public body, as argued by EPS. For example, the general function of a police service is law enforcement. In contrast, a public body's programs and activities would refer to specific plans and projects intended to carry out that function. As a result, I do not find that section 33(c) applies.

[para 86] For these reasons, I find that EPS collected the Complainant's information and that of other pawnshop and second-hand store clients in contravention of section 33 of the FOIP Act.

Section 34

[para 87] EPS and BWI argue that BWI is EPS' employee under the Act, as there is a service contract between the City, on behalf of EPS, and BWI. Therefore, they reason that EPS is collecting personal information directly from pawnshops. I disagree that BWI is an employee of EPS. EPS is not a party to the contract between the City and BWI. Under section 27 of the *Police Act* R.S.A. 2000 c. P-17, it is the responsibility of the City to maintain and establish the police service, which includes entering contracts on behalf of EPS. The *Police Act* does not appear to provide any ability for police services to enter into contracts. While police services are public bodies under the FOIP Act, this designation does not create any contracting ability.

[para 88] It is also important to note that a pawnshop or second-hand store is not an individual under the Act. Consequently, even if BWI were an employee of EPS, the collection of customer information from pawnshops and second-hand stores remains indirect and must be authorized by a provision of section 34. As discussed above, the authority for BWI and EPS to collect information about pawnshop and second-hand store clients is the City Manager's directive and the City's contract with BWI. The directive is

without authority and therefore the method of collection is not authorized by an Act or regulation.

[para 89] By downloading information from the BWI database, EPS collects information collected by pawnshops and second-hand stores under Bylaw 13138. As the information is not provided by the individual directly to a peace officer, this would be an indirect collection by EPS for the purposes of section 34.

[para 90] As noted above, there are prescribed circumstances in section 34 which allow a public body to collect information indirectly. However, I have already found that EPS did not collect the complainant's personal information for a law enforcement purpose. I do not find that any other provisions of section 34 apply to permit EPS to collect personal information indirectly from individuals.

[para 91] For these reasons, I find that EPS collected the Complainant's personal information, and that of other pawnshop and second-hand store customers contrary to section 34 the FOIP Act.

Issue F: Is there a conflict between Municipal Bylaw 13138 and section 33 of the FOIP Act for the purposes of section 13 of the *Municipal Government Act*?

[para 92] In *Cash Converters Canada v. Oshawa (City)*, 2007 ONCA 502, the Ontario Court of Appeal determined that a civic bylaw requiring second-hand stores to upload clients' personal information to the BWI database conflicted with section 28(2) of the *Municipal Freedom of Information and Privacy Protection Act*.

[para 93] Section 28(2) of that Act states:

(2) No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or necessary to the proper administration of a lawfully authorized activity.

[para 94] The Court of Appeal found that the bylaw is not a statute within the meaning of the *Municipal Freedom of Information and Privacy Protection Act*. Had section 33 of the FOIP Act also used the term "statute", it is likely that Bylaw 13138 would conflict with section 33. However, section 33 uses the term "enactment". Under Issue B, I have already determined that a bylaw is an enactment within the meaning of section 33 and may expressly authorize the collection of information. As stated above, I do not find that Municipal Bylaw 13138, on its face, conflicts with section 33 of the FOIP Act.

[para 95] As discussed above, the Ontario Court of Appeal also found that the purpose for collecting information was consumer protection rather than law enforcement. In relation to whether collection was necessary for the proper administration of a lawfully authorized activity, the Court stated:

Based on the evidence in this application, the city has not demonstrated that the impugned provisions of the new by-law that mandate the collection and electronic transmission to police of detailed personal information about vendors of second-hand goods, is necessary for an effective consumer protection regime to license second-hand dealers.

Consequently, the Court found that the municipality lacked the authority to enact the bylaw and declared it to be of no force and effect.

[para 96] Unlike the City of Oshawa, the City did not amend its bylaw to require pawnshops and second-hand stores to upload information collected from clients to the BWI database. Instead, the City has relied on a policy directive to achieve this purpose. I find that while the bylaw itself does not conflict with section 33 of the FOIP Act, the system created by the directive does.

Case File Number P0363

Issue G: Is the *Personal Information Protection Act* (PIPA) inapplicable to the Complainant's personal information because the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) applies, by virtue of section 4(2) of PIPA and / or section 4(3)(e) of PIPA?

Issue H: If PIPA nonetheless applies, the Commissioner will also consider the following issues:

- 1. Did the Organization have the authority to collect and disclose the Complainant's personal information without consent, as provided by section 14(b) and section 20(b) of the PIPA and section 5 of the Personal Information Protection Regulation?**
- 2. If the Organization did not have the authority to collect or disclose the complainant's personal information without consent, was the collection or disclosure in contravention of section 7(1) of PIPA, having regard to sections 8(2) and (3) of the PIPA?**
- 3. Did the Organization collect and disclose the Complainant's personal information for purposes that are reasonable, as required by section 11(1) and section 19(1) of PIPA respectively?**
- 4. Did the Organization collect and disclose the Complainant's personal information only to the extent that it is reasonable for meeting the purposes for which the information was collected and disclosed, as provided by section 11(2) and section 19(2) of PIPA?**

[para 97] I will address issues G and H together as they are interrelated.

[para 98] Pawnshops and second-hand stores are organizations under PIPA. Consequently, PIPA applies to the information collected, used and disclosed by these businesses, subject to the exceptions in that Act. Section 4 of PIPA explains the Act's application. It states in part:

4(1) Except as provided in this Act and subject to the regulations, this Act applies to every organization and in respect of all personal information.

(2) Subject to the regulations, this Act does not apply to a public body or any personal information that is in the custody of or under the control of a public body.

(3) This Act does not apply to the following:

(e) personal information that is in the custody of an organization if the Freedom of Information and Protection of Privacy Act applies to that information;

[para 99] I have already found that the Complainant's personal information, uploaded to BWI under the City Manager's directive, is in the custody of the City and that the FOIP Act applies to that information. By application of section 4(2), PIPA does not apply to the City, a public body, or to information in its custody or under its control. Consequently, PIPA does not apply to the information uploaded by pawnshops or second-hand stores to the BWI database under the directive.

[para 100] In situations where pawnshops and second-hand stores maintain physical custody of the information, such as when a copy of information is kept after sending it to the BWI database, PIPA would not apply with respect to that information by virtue of section 4(3)(e). Instead, the FOIP Act applies, and responsibilities under the FOIP Act in relation to that information belong to the City.

[para 101] As I have found that PIPA does not apply to the Complainant's information, there is no need to address any further questions relating to the application of PIPA.

V. SUMMARY OF FINDINGS

[para 102] I find that the Complainant's personal information, and that of other pawnshop and second-hand store clients contained in the BWI database, is in the custody of the City for the purposes of the FOIP Act.

[para 103] I find that the City has collected the Complainant's personal information, and that of other pawnshop and second-hand store clients, contrary to section 33 and 34 of the FOIP Act.

[para 104] I find that the City does not have authority to disclose the Complainant's personal information to EPS under section 40.

[para 105] I find that the City has not met its duty to protect the personal information of the Complainant and other pawnshop and second-hand store clients under section 38.

[para 106] I find that EPS collected the Complainant's personal information, and that of other pawnshop and second-hand store customers contrary to section 33 and 34 of the FOIP Act.

[para 107] I find that Bylaw 13138 does not conflict with section 33 of the FOIP Act, but the information collection system created by the directive does.

[para 108] I find that PIPA does not apply to the Complainant's personal information or that of other pawnshop or second-hand store clients, as that information is in the custody of the City and is subject to the FOIP Act.

VI. ORDER

[para 109] I make this Order under section 72 of the FOIP Act.

Case File Number 3561

[para 110] I require the City to cease collecting personal information contrary to the FOIP Act. To comply, the City must cease requiring pawnshop and second-hand stores to upload personal information to the BWI database.

[para 111] I require the City to destroy the Complainant's personal information collected under the directive.

[para 112] I order the City to destroy the BWI database.

[para 113] I require the City to fulfill its duty under section 38 in relation to personal information of pawnshop and second-hand store clients that has been uploaded to the BWI database under the directive, and is in the physical custody of a pawnshop or second-hand store.

[para 114] I further order the City to notify me, in writing, within 50 days of receiving a copy of this Order that it has complied with the Order.

[para 115] Compliance with this Order is to be certified to me by statutory declaration or affidavit.

Case File Number 3562

[para 116] I require EPS to cease collecting personal information contrary to the FOIP Act.

[para 117] I further order EPS to notify me, in writing, within 50 days of receiving a copy of this Order that it has complied with the Order.

[para 118] Compliance with this Order is to be certified to me by statutory declaration or affidavit.

Case File Number P0363

[para 119] I make this Order under section 52 of PIPA.

[para 120] I find that PIPA does not apply to the Complainant's personal information.

Frank Work, Q.C.
Information and Privacy Commissioner