

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER P2007-003

April 24, 2007

**URBAN AUDIO VIDEO INC. (formerly known as International Stereo
Ltd.) and
WELLS FARGO FINANCIAL CORPORATION OF CANADA**

Case File Number P0370

Office URL: www.oipc.ab.ca

Summary: Two Complainants brought complaints under the *Personal Information Protection Act* with respect to the collection, use and disclosure of their personal information by International Stereo Ltd., (now operating as Urban Audio Video Inc.) (the “Retailer”). The information had been collected by the Retailer and then conveyed to Wells Fargo Financial Corporation of Canada, so as to permit the latter organization to conduct credit checks for determining whether it would grant credit for buying the Retailer’s merchandise. Although the Complainants signed applications containing clauses consenting to use of personal information for credit checks, they said they had been assured their personal information would not be used in this way. They also said they had been led to believe the cards for which they applied would allow them to get 10% discounts on purchases. As well, one of them complained that his request to withdraw his application had been refused.

The Adjudicator found that the Retailer collected, used and disclosed the Complainants’ personal information in violation of section 7 of the Act (collection, use and disclosure without consent), that it failed to provide adequate notification of the purpose for collection in contravention of section 13, and that it failed to cease collecting, using or disclosing the personal information after consent had been withdrawn, in violation of section 9(4).

Statutes Cited: AB: *Personal Information Protection Act* S.A. 2003, c. P-6.5, ss. 7, 7(1), 8, 8(1), 8(2), 9, 9(4), 9(4)(a), 9(5), 10, 13, 52, 52(3)(g).

I. BACKGROUND

[para 1] On February 2, 2006, the two Complainants entered International Stereo Ltd., (now operating as Urban Audio Video Inc.), an “organization” under the *Personal Information Protection Act* (the “Retailer”). After discussions with the Retailer’s staff, they provided their personal information in written form on credit applications, and signed the applications. The Retailer conveyed the information to Wells Fargo Financial Corporation of Canada, also an “organization” under the Act (the “Credit Grantor”). The latter organization used the personal information to conduct credit checks to determine whether to grant credit to the Complainants for purchases of the Retailer’s merchandise.

[para 2] On February 3, 2006, the Complainants brought complaints to this Office under the *Personal Information Protection Act* (the “Act”). Although they had signed applications that contain clauses consenting to use of personal information for credit checks, they said that they had been assured their personal information would not be used in this way. As well, they said they had been led to believe the cards for which they applied would allow them to get 10% discounts on purchases. One of them also complained that his request to withdraw his application had been refused.

[para 3] Mediation was not successful, and the matter was brought to inquiry.

II. RECORDS AT ISSUE

[para 4] As this matter involves a complaint, there are no records at issue.

III. ISSUES

[para 5] The Issues in this Inquiry are:

Issue A: Did the Organization collect, use or disclose “personal information” of the Complainants as that term is defined in PIPA?

Issue B: Did the Organization collect, use or disclose the information in contravention of, or in compliance with, section 7(1) of PIPA (no collection, use or disclosure without either authorization or consent)? In particular,

- a. Did the Organization have the authority to collect, use or disclose the information without consent, as permitted by sections 14, 17 and 20 of PIPA?
- b. If the Organization did not have the authority to collect, use or disclose the information without consent, did the Organization obtain the

Complainant's consent in accordance with section 8 of the Act before collecting, using or disclosing the information?

Issue C: Did the Organization collect the information in contravention of, or in compliance with, section 13 of PIPA? In particular, was it required to provide, and did it provide, notification, before or at the time of collecting the information, in accordance with the requirements of section 13 of PIPA?

Issue D: If the Complainants consented to collection, use and disclosure of their information, did they withdraw their consent within the terms of section 9(4)(a) of the Act?

Issue E: If the Complainants withdrew any consent they had given, did the Organization comply with section 9(4) of the Act (ceasing collection, use or disclosure on withdrawal of consent)?

Issue F: If the Complainants consented to collection and/or use of their information, does section 10 of the Act (negation of consent) apply to the collection and/or use?

[para 6] In this inquiry, I will be considering issues B(b), C and F together.

IV. DISCUSSION OF ISSUES

Issue A: Did the Organization collect, use or disclose “personal information” of the Complainants as that term is defined in PIPA?

[para 7] The Retailer conceded that it collected, used and disclosed the personal information of the Complainants for the purpose of determining whether credit cards would be issued (by the Credit Grantor) that would enable the Complainants to buy the Retailer's merchandise. The information, collected on application forms, consisted of names, birthdates, addresses, phone numbers, whether they owned their own homes, time at residence, employers, the number of years employed, net income, and social insurance numbers. This was the personal information of the Complainants.

[para 8] The Retailer also acknowledged that it conveyed the information collected by it to the Credit Grantor. It appears the Credit Grantor used the information for the purpose of performing credit checks and deciding whether to issue credit cards.¹ Thus both of the

¹ It is suggested by the Retailer in its argument (page 7, Response under #5; page 8, Response under #3) that the Credit Grantor used the personal information to conduct a credit check, in the sense of obtaining further information from other agencies about the Complainants' credit-worthiness. As well, in its rebuttal submission, the Retailer states : “The Credit search performed by [the Credit Grantor] was removed from the Complainants' records”, indicating that credit checks relative to the Complainants were conducted by obtaining information from credit bureaus. This is supported by the Credit Grantor, which states in its submission that upon receiving a notice of an investigation by this Office into the facts at issue, it instructed two credit bureaus to remove any reference to a credit inquiry by the Credit Grantor in respect of the applications in question.

organizations that are named as respondents collected, used and disclosed the Complainants' personal information.

[para 9] However, the facts and issues in this case relate primarily to what the Retailer told the Complainants, at the time it provided the applications and collected the information, about the collection, use and disclosure of their personal information, and whether, in light of what it told the Complainants, its collection, use and disclosure of the personal information was in violation of the Act. There is no evidence that the Credit Grantor had any control over what verbal information the Retailer provided to the Complainants in the process of collecting the information. The Credit Grantor indicated in its submission that the collection, use and any further disclosure of personal information by the Credit Grantor was on the basis of the signatures on the application forms. The Credit Grantor also indicated that it did not receive notice of any withdrawal of this written consent by the Complainants prior to the complaints having been made. I accept this evidence, and in light of it, I will concern myself primarily with the collection, use and disclosure of the information by the Retailer.²

Issue B: Did the Organization collect, use or disclose the information in contravention of, or in compliance with, section 7(1) of PIPA (no collection, use or disclosure without either authorization or consent)?

[para 10] Section 7(1) of the Act provides:

7(1) Except where this Act provides otherwise, an organization shall not, with respect to personal information about an individual,

- (a) collect that information unless the individual consents to the collection of that information,*
- (c) use that information unless the individual consents to the use of that information, or*
- (d) disclose that information unless the individual consents to the disclosure of that information.*

² I note that section 5(2) of the Act provides that where an organization engages the services of a person as agent or by contract, the organization is, with respect to those services, responsible for the person's compliance with the Act. In this case, the Retailer had a contractual relationship with the Credit Grantor. It is possible that this relationship falls within the terms of section 5. If that is so, I note that, as the Credit Grantor pointed out in its submission, its contract with the Retailer required the latter to abide by all applicable legislation, including privacy legislation. The application that it provided to the Retailer and relied on was, on its face and in itself, reasonably clear as to the purpose of conducting credit checks and issuing credit. I do not believe that in order for the Credit Grantor to comply with any obligations it had under section 5(2), it was obliged to monitor the verbal communications between the Retailer and its customers who used the applications; practically, it could not have done so. It is also clear, by reference to section 5(6) of the Act, that despite any responsibilities the Credit Grantor might have had respecting the actions of the Retailer by virtue of section 5(2), the Retailer was fully responsible to comply with the Act in its own right.

[para 11] Under section 7, an organization may not collect, use or disclose personal information unless it has authority to do so under another part of the Act, or the individual consents.

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

[para 12] The Retailer conceded that it was not authorized by any other part of the Act to collect, use or disclose the Complainants' personal information without their consent, and I find it had no such authority.

- b. If the Organization did not have the authority to collect, use or disclose the information without consent, did the Organization obtain the Complainant's consent in accordance with section 8 of the Act before collecting, using or disclosing the information?**

Issue C: Did the Organization collect the information in contravention of, or in compliance with, section 13 of PIPA? In particular, was it required to provide, and did it provide, notification, before or at the time of collecting the information, in accordance with the requirements of section 13 of PIPA?

Issue F: If the Complainants consented to collection and/or use of their information, does section 10 of the Act (negation of consent) apply to the collection and/or use?

[para 13] Issues B(b), C and F are closely related. The issue of whether the Complainants consented to the collection, use or disclosure of their personal information (in accordance with section 8) is closely tied to the question of whether the Retailer notified them of the purpose for which the information was being collected (as required by section 13). Whether or not the signed consent that was given was negated by misleading information (under section 10) also depends on the same facts. (It is, in a sense, the same question, in that the Complainants could not consent to collection, use or disclosure for a particular purpose if they were misinformed as to what that purpose was).

[para 14] The provisions of the Act that are relevant to these questions are:

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

10 If an organization obtains or attempts to obtain consent to the collection, use or disclosure of personal information by

- (a) providing false or misleading information respecting the collection, use or disclosure of the information, or*
- (b) using deceptive or misleading practices,*

any consent provided or obtained under those circumstances is negated.

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

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

[para 15] In accordance with these provisions, where a person's personal information is collected directly from them, they must be notified of the purpose before or at the time (section 13). This requirement applies where the collection, use or disclosure is pursuant to an express consent. Even if there is notification, in writing, of the purpose for which a written (signed) consent is given, that consent may be negated where other information that is deceptive or misleading is provided, either in writing or orally, about the collection, use or disclosure. In my view, this could happen both where there is misleading information (from some source other than the written notification) about what will be done with the information (the purpose for the collection, use or disclosure), and where there is other misleading information about some other consequence of the collection, use or disclosure.

[para 16] Both Complainants signed forms containing clauses for consent to collection and disclosure of personal information for the purpose of running credit checks and deciding whether to grant credit. At the same time, the Complainants say that they were told that their personal information would not be used in this way. I must therefore decide the following questions: whether in view of all the facts, the Retailer had notified the Complainants, before or at the time they gave their written consents, of the purpose for which their personal information was being collected, used and disclosed; whether they consented to the collection, use and disclosure of their personal information in accordance with section 8; and whether, if they did consent, the consent was negated by misleading information.

[para 17] The evidence described below leads me to conclude that the Complainants were not properly notified, and they did not consent, or if they did, their consent was negated by misleading information.

The evidence

[para 18] The information supplied by Complainants (as stated in the letters provided to the Commissioner in order to initiate the complaints) is as follows:

[para 19] The first complainant (CR) stated that the store clerk asked him and his companion (CK) if they would like free 10% discount cards for the store. He also stated that the salesperson said "there was a demo that we had to sit through in order to get discount cards". CR said that he and CK filled out the applications for the cards before sitting through the 'demo'. He said the applications "were credit applications with the middle section crossed out". CR said that he thought they would receive the "discount

cards” after sitting through the demo, but was told when the demo was over that the cards would be mailed in about a week.

[para 20] CR said that on leaving the store he felt uneasy about having given his personal information, and after discussing this with CK they went back in to discuss the purpose of the application with the sales staff. He states: “... they said they would not be checking our credit, it was not a credit check, they would not be checking our credit, nor did we give them permission two (sic) because two (sic) our understanding these were just discount card forms”.

[para 21] CR then asked to see his application, and asked if he could withdraw it. He says:

I asked him, can I take this with me. He said “it can’t leave the store”. So then I said can you destroy it I don’t want a discount card. He said no they can’t do that. Even when I didn’t want a 10% discount card, they pretty much gave me no choice, they wouldn’t destroy the forms, or let me out of the application.

[para 22] CK’s statement describes the same events. He states that he and CR made small talk with a salesman who suggested a stereo demo and free 10% discount cards. He says they filled out the paperwork before the ‘demo’, and that as they were leaving the store a salesperson said he would mail the discount cards to them. He said this made him suspicious as he had not put a P.O. Box number on the application. He said they went back into the store “to retrieve our credit apps (paperwork)”. He said he added his P.O. Box number to his document, but that CR

...asked to take his out of the store to which they said no. He then asked to destroy the documents and again he said no.

[para 23] CK also stated that “He then said he was sending the info. to his main store only and we needn’t worry, that they would not be using them for credit purposes.” CK added that both he and CR put their “credit papers” in with other credit papers that were on the desk, and then left the store.

[para 24] These statements of complaint are before me in this inquiry. During the course of the inquiry, I provided one of these letters to the Retailer, and summarized the other one.

[para 25] The Retailer responded to the complaints by providing affidavits of three of its employees – the clerk who served the Complainants, as well as the Retailer’s general manager and the store manager, both of whom say they were present in the store at the relevant times. These affidavits depose to the following.

[para 26] First, the clerk who served the Complainants says the following:

... on February 2, 2006, the day the Complainants ... did enter the West Edmonton Mall International Stereo location for the purpose of obtaining credit to purchase stereo equipment that I provided the complainants with a copy of the preferred customer card application to fill out, while offering them page 3 and 4 of the application. I further swear that I did not refer to the credit application or the preferred customer credit card as a “10% discount card”, nor did I make any other statements that should make a customer think they were providing information for anything other than a credit card application, and that I did state they were completing the application to obtain credit for the purposes of purchasing a stereo.

[para 27] The person working as the store manager on the day in question swears that he did not hear any employee refer to the credit application or the preferred customer credit card as a “10% discount card” or as anything other than a credit application or a preferred customer card.

[para 28] The general manager of the Retailer swears that on the day in question he was in the store and he did not hear anyone refer to the credit application or the preferred customer credit card as a “10% discount card”, and further that he has never heard any employee of the Retailer in any location refer to the credit application or preferred customer card as “anything other than what they are”. He also swears that there would be no reason for an employee to mislead a customer into filling out a credit application, as employees do not receive remuneration for having customers fill out credit applications.

[para 29] I turn next to the application form itself, which was provided to me by the Retailer. It has no heading. The “crossed out” portion on the particular applications signed by the Complainants (also provided to me by the Retailer) crosses out two sections – the “credit history” section that includes bank and credit card information, and the portion to be filled out by a co-applicant or spouse, if any. The following appears above the signature line at the bottom of the first page (below the spaces for the personal information that is to be provided):

Please read the following, enter date, and sign.

I the undersigned Applicant apply for and request [the Retailer] or its affiliates to establish an account to provide credit under the terms of the Cardholder Agreement and I further agree and consent to the use of “personal information” as set out in the Agreement and Consent to Use of Personal Information on the reverse.³

...

I consent to the receipt, disclosure and exchange of personal information (including credit, employment, or other information) from, to or with any credit reporting agency, credit bureau, personal information agent, credit grantor, insurer, employer, affiliate of [the Credit Grantor] or other person with whom I have or propose to have a financial relationship.

³ One of the uses listed on the back of the first page is to evaluate credit standing.

I acknowledge receipt of the terms and conditions with respect to the revolving credit agreement attached to this application form.

[para 30] Only the first page has a place for a signature, at the bottom. The tear-off portion of the form (pages 3 and 4), which includes the terms of the credit relationship, has no place for signatures. The back of the first page (page 2) is titled “Agreement & Consent to Use of Personal Information”. It also has no place for a signature.⁴

10% discount

[para 31] The two sides differ as to the terms that were used by the Retailer’s staff to describe the cards that were being applied for. The Complainants say they were referred to as “10% discount cards”, while the Retailer says they were called “Preferred Customer Cards”. However, the Retailer does not deny that discounts were discussed; its evidence addresses a very specific point – how its employees referred to the cards. (As well, the store clerk says that he did not “make any other statements that should make a customer think they were providing information for anything other than a credit card application”. However, while this part of the Retailer’s evidence is clear on the point that the complainants were informed the applications were for credit cards, it is ambiguous in terms of whether there was also a discussion about whether the cards they were applying for would entitle card holders to discounts. It is not a direct denial of the direct assertion by the Complainants that this is what they were told.)

[para 32] In my view, the designation “Preferred Customer Card” is also significant. It carries a suggestion that having such a card confers some kind of advantage to the card holder. The cardholder agreement’s terms and conditions (on page 3, the ‘tear-off’ part of the form), under heading #13 “Preferred Customer Cards”, discusses such cards. It states, somewhat enigmatically, that

We may send preferred customer cards to you to identify you as our preferred customer. These cards always belong to us, and are not to be used to debit your Account. If we ask, you will return all cards that you have received.⁵

[para 33] As the Complainants’ assertions that there was discussion about discounts attaching to the cards is not directly contradicted, it is possible to conclude, without rejecting the Retailer’s evidence that its staff referred to the cards as “Preferred Customer Cards”, that there was a discussion about the cards entitling a holder to 10% discounts. I

⁴ I note that on this unsigned page (back of page 1) there is also an extensive list of other purposes for which consent to use of personal information is being given. This list includes for promoting and marketing additional products, as well as “for any other purpose not prohibited by law”. As well, this part of the form includes a consent to continued disclosure of personal information to credit bureaus even after a loan is retired, as well as a promise not to withdraw such consent. However, I will not deal with these parts of the form in this inquiry, as the facts do not engage them.

⁵ This clause also carries some suggestion that the preferred customer card is not the same as a credit card, insofar as it seems to say that the former cannot be used to make purchases. At the same time, however, there is a heading (# 16) that deals with “Lost or Stolen Preferred Cards” which seems to suggest purchases can be made with such a card. At the very least, the cardholder agreement creates the potential for uncertainty as to the significance of applying for such a card.

also take into account that there appears to me to be no reason for the Complainants to fabricate the idea that they were given this information as an incentive to apply for the cards.⁶ Thus I conclude that there was some discussion about 10% discounts related to the cards.

[para 34] At the same time, I have no clear evidence as to whether a right to discounts did or did not attach to the credit cards in question. I note the Retailer did not respond to the Complainants' allegation that 10% discounts were being offered by saying this would not have been misleading. Presumably, if such cards did entail discounts, it might have said so as a way of dealing with this aspect of the allegation. This suggests there were in fact no discounts. However, it is not the same as clear statement to that effect. Nor do I have any evidence from the Complainants on this point. As cards were not provided to them, they did not try to use them, successfully or otherwise, to try to get discounts. As noted, the cardholder agreement is also not helpful on this point. Since I cannot make a conclusive finding as to whether discounts actually attached to the cards, I cannot find that the fact the Complainants were told the cards would entitle them to discounts, or something like it, was misleading.⁷

[para 35] Despite this, my conclusion that the Complainants were led to believe there would be discounts is still important. As the first Complainant (CR) asserted⁸, and as I will explain more fully below,⁹ this finding helps explain why the Complainants would supply their personal information while thinking that the cards they were applying for would not entail a credit check. As will also be seen below, what the Complainants were led to believe about credit checks is critical to the outcome in this case.

Credit checks

[para 36] The Retailer's sworn evidence does not address this key aspect of the complaints. It does not deny that, as the Complainants asserted, they were assured the information would not be used to complete a credit check. The first of the Complainants makes this point repeatedly in his statement, and seems to have been particularly concerned about it. The other Complainant says he was assured the applications would be sent only to the "main store" and that they would not be using them "for credit purposes". This part of the Complainants' complaint is also uncontradicted by the Retailer. I conclude that the Complainants were led to believe, when they filled out the applications and provided their personal information, that the cards for which they were applying

⁶ The Retailer points to the evidence that the sister of the secretary of one of the Complainants was formerly an employee of the Retailer, and speculates that this person may have been a "disgruntled ex-employee", and that the Complainant's relationship with her might have motivated him to fabricate his complaint. However, there is no evidence of a relationship between the Complainant and the ex-employee, and in my view this contention is too speculative to influence my findings.

⁷ If, as a matter of fact, there were no associated discounts, it would follow, from my finding that there was a suggestion that discounts would attach to the cards, that the Complainants were misled on this point. In my view, this would negate the consents that were given by virtue of signing the applications. However, as I have said, there is insufficient evidence on which to base such a conclusion.

⁸ See paragraph 19.

⁹ See paragraph 39.

would be provided as a matter of course, rather than that they might or might not be provided depending on their credit status as determined by credit checks.

[para 37] I do not overlook what was written on the applications themselves. These state, in bold writing (albeit a small font), that the applications are for “an account to provide credit” and that applicants consent to the disclosure and exchange of their personal information, “including credit, employment, or other information, from, to or with any credit reporting agency, credit bureau, [and] personal information agent”. These written statements on the application forms are notifications that the cards for which the applications are being made are to allow purchases in the store on credit. The agreement that the personal information may be exchanged with credit granting agencies and credit bureaus, as well as the statement on the back of the form that the information may be used to evaluate credit, is a notification that the personal information that is supplied can be used to perform credit checks. As well, I note there is uncontradicted evidence from the Retailer that the Complainants were given tear-off portions of the applications which stated that the purpose of the application was to obtain credit, and which set out the manner in which applicants’ personal information could be used.

[para 38] I note as well that in filling out the application forms, the Complainants included information about their employers, the length of their period of employment, whether they owned their homes, their monthly net incomes, and their social insurance numbers. I accept that it would be reasonable for a person providing such information to assume they were applying for credit.

[para 39] However, it is equally important, in my view, that the parts of the forms that contain information that would facilitate a credit check (banking and credit card information) were crossed out. I cannot conclude that it would be unreasonable, especially in view of the crossed-out part of the form, together with the assurances that their credit would not be checked, for the Complainants to think that the information they did supply was sufficient for obtaining in-store credit limited to the particular retailer. Further, the fact they signed consents to use of their personal information for checking credit – that they were made aware of and consented to the fact that this *could* happen - is not inconsistent with their believing verbal assurances that it *would not* happen.

[para 40] Alternatively, it would also be reasonable for the Complainants to think that the information they were providing was the sort of demographic information that is useful to retailers to know about their customers (and that a percentage discount would be the incentive for supplying the information, and the additional information about purchasing patterns that the use of such cards conveys).

Conclusions

[para 41] In view of all the evidence, I find that the Complainants had some level of awareness that the applications were, on their faces, applications for cards that could be used to buy the Retailer’s merchandise on credit. They do not seem to deny this. Rather, they are complaining that although they had been assured their credit would not be checked before these cards would issue, and that their personal information would not be

disclosed outside of the Retailer's operations, both these things happened. I accept that they were given these assurances. In light of my finding that they were also led to believe that 10% discounts were associated with the cards, I conclude it was not unreasonable for them to believe that the cards would be issued to them by the Retailer, simply on the basis of the information they had provided.

[para 42] Thus I find that the notification the Retailer is required to give under section 13 of the purpose for which the personal information was being collected, used and disclosed, was inadequate. As well, I find the written consents to collection, use and disclosure of personal information that were given were negated (by virtue of section 10) by misleading verbal information that the information would not be disclosed to any other organization, and that credit checks would not be conducted.

[para 43] As already noted, there was no suggestion the Retailer had authority to collect, use or disclose the information without consent. Thus I hold that the Retailer's collection and use of the Complainants' personal information, and its conveyance to the Credit Grantor for the purpose of credit checks and decisions whether to grant credit, was in violation of section 7(1) of the Act.

Issue D: If the Complainants consented to collection, use and disclosure of their information, did they withdraw their consent within the terms of section 9(4)(a) of the Act?

Issue E: If the Complainants withdrew any consent they had given, did the Organization comply with section 9(4) of the Act (ceasing collection, use or disclosure on withdrawal of consent)?

[para 44] I will consider issues D and E together.

[para 45] The relevant parts of section 9 provide:

9(1) Subject to subsection (5), on giving reasonable notice to an organization, an individual may at any time withdraw or vary consent to the collection, use or disclosure by the organization of personal information about the individual.

(4) Except where the collection, use or disclosure of personal information without consent of the individual is permitted under this Act, if an individual withdraws or varies a consent to the collection, use or disclosure of personal information about the individual by an organization, the organization must,

(a) in the case of the withdrawal of a consent, stop collecting, using or disclosing the information, and

(b) in the case of a variation of a consent, abide by the consent as varied.

(5) If withdrawing or varying a consent would frustrate the performance of a legal obligation, any withdrawal or variation of the consent does not, unless otherwise agreed to by the parties who are subject to the legal obligation, operate to the extent that the withdrawal or variation would frustrate the performance of the legal obligation owed between those parties.

(6) A withdrawal or variation of a consent by an individual may be given to an organization in the same manner as a consent may be given.

[para 46] As the review of the evidence under the preceding heading shows, the Complainants both contend that one of them sought to withdraw his consent. The evidence provided by the Retailer's employees does not contradict this. Indeed, the submission of the Retailer confirms it. The submission points to correspondence between itself and the Credit Grantor which it says supports its contention that the Retailer was obligated to provide the signed and processed applications to the credit-granting organization.¹⁰ As well, it argues that consent was provided in the form of a signed application, and that the Retailer was contractually obligated to provide such documents to the Credit Grantor.¹¹ These statements of the Retailer explaining why it refused to allow the Complainant to take back his application confirm that he asked to have it back.

[para 47] In view of the foregoing I find that CR asked to withdraw his consent within the terms of section 9(1). I am not moved from this finding by the fact he put the application back on the pile of similar applications when he was told he could not withdraw the application. In the circumstances, I believe he was made to believe that taking the form back in spite of being told he could not do so was wrong in some way, or could result in a confrontation with the store clerk or clerks which he wished to avoid.

[para 48] I further find that the Retailer did not cease collecting, using or disclosing CR's personal information after he withdrew his consent, as it was required to do by section 9(4)(a). Indeed, it expressly refused to do so. Again, this is confirmed by the Retailer's submissions which seem to be an explanation as to why it could not permit the Complainant to withdraw the application.

¹⁰ The Retailer's 'Exhibit 4' is a letter from the Credit Grantor's area manager to the Retailer's general manager which asks the Retailer to retain all original [Credit Grantor's] customers' documentation at the office of the latter, but offers to store them instead if that makes the retailer's manager "more comfortable". (I note, however that, contrary to the Retailer's contention, this correspondence is in the form of a request, and does not refer to any obligation, nor is it clear that the "Credit Grantor's customers' documentation" was intended to refer to unprocessed applications for credit.) However, the fact this letter was offered as evidence of an obligation supports the idea that the Retailer refused to permit withdrawal of the application.

¹¹ In the "Summary of Facts" in the Retailer's submission it says that "[the Retailer's] agreement with [the Credit Grantor] stipulated all applications submitted for credit review must be submitted to [the Credit Grantor], or retained for audit by [the Credit Grantor], to ensure each application was signed by the applicant from which the credit review was performed." Again, the fact that this was offered as evidence that the documents had to be provided to the Credit Grantor corroborates the idea that the Retailer took this same position with the Complainant. However, in my view, the agreement referred to (which was provided to me) does not establish that such an obligation existed. See further at paragraph 49 below.

[para 49] Section 9(5), which invalidates withdrawal of a consent where this would frustrate the performance of the legal obligations of the organization, does not assist the Retailer in this case. As noted, in its submission (Summary of Facts), the Retailer says it had an obligation to submit applications for credit review to the Credit Grantor, or to retain them for audit by the Credit Grantor, “to ensure each application was signed by the applicant for which the credit review was performed”. This statement does not, on its face, apply to applications for which consent had been withdrawn before the application was submitted to the Credit Grantor, as for such applications, no credit review has been performed, and the applicants have not become the Credit Grantor’s customers. Further, the highlighted portions of the agreement between the Retailer and the Credit Grantor on which the Retailer relies in support of its point speak only of the retention of “Sales Drafts” for the purposes of an audit. “Sales Drafts” is a term which is distinguished in that same agreement from the term “applications” (the latter of which appears from the context to refer to credit applications). There is no term in the agreement provided to me that speaks to retention of “applications”. Thus I cannot conclude that there was any such contractual obligation. Thus I find that the refusal to permit the Complainant to withdraw his consent as contained in the application was in violation of section 9(4)(a) of the Act.

[para 50] I note as well that the Retailer’s contention, referring to the General Manager’s affidavit, that “[t]he original application was stored in a safe, secure place for the exclusive use of Wells Fargo”, suggests that even after credit was denied to the Complainants, their personal information may have been retained for further business purposes. I note the actual applications signed by the Complainants were provided to me by the Retailer. If the Retailer or the Credit Grantor have retained the applications until the present time for business purposes (in contrast to the purpose of replying to the present complaints or dealing with related legal matters), there is a continuing violation of section 9(4)(a).

V. ORDER

[para 51] I make this Order under section 52 of the Act.

[para 52] I find the Retailer collected, used and disclosed the Complainants’ personal information in violation of section 7 of the Act, that it failed to notify the Complainants of the purpose for collection in contravention of section 13, and that it failed to cease collecting, using or disclosing the personal information after consent had been withdrawn, in violation of section 9(4)(a).

[para 53] If the personal information of the Complainants has been retained in the possession of either or both of the organizations for business purposes, I order them, pursuant to section 52(3)(g) of the Act, to destroy those copies of the personal information. The personal information that is essential to deal with any legal matters that arise from these complaints may be retained, in separate files, for as long as it is needed for the latter purpose.

[para 54] I further order the organizations to notify me, in writing, within 50 days of the date they receive this order, that they have complied with it.

Christina Gauk, Ph.D.
Director of Adjudication