

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER P2008-004**

August 27, 2008

**Leon's Furniture Ltd.**

Case File Number P0633

**Office URL:** [www.oipc.ab.ca](http://www.oipc.ab.ca)

**Summary:** The Complainant was required to supply her driver's license number and license plate number to the Organization before being allowed to pick up merchandise ordered by her daughter on an earlier date. The Organization's policy was to require this information to be recorded on a "pick ticket" in order to prevent fraud and theft and to assist the customer and police in situations where someone had fraudulently picked up merchandise, previously paid for by a customer, when they were not authorized to do so.

The Adjudicator found that the Organization's purpose for collecting personal information, the prevention of fraud, was reasonable but that the recording of drivers' license numbers and license plate numbers was not reasonably connected to the purpose as required by section 11(2) of the Act.

The Adjudicator also found that the Organization contravened section 7(2) of the Act by requiring the Complainant to provide personal information that was not necessary to the transaction or a related purpose.

Finally, the Adjudicator found that the Organization did not meet its burden of proof regarding giving adequate notice under section 13 of the Act.

The Adjudicator ordered the Organization to cease recording drivers' license numbers and license plate numbers and to destroy all drivers' license and license plate numbers already recorded from drivers' licenses of individuals who have picked up merchandise.

**Statutes Cited: AB:** *Personal Information Protection Act* S.A. 2003, c. P-6.5 ss. 1(k), 7(2), 7(3), 8(3), 11(2), 13, 52.

**Authorities Cited: AB:** Order P05-01, Order P2007-016, P2006-011, Investigation Report P2007-IR-006, Investigation Report P2005-IR-007.

## **I. BACKGROUND**

[para 1] On December 26, 2006, the Complainant's daughter ordered a table from the Organization and paid a deposit. At the time of ordering the table, she indicated to the sales clerk that the Complainant was authorized to pick up the table when it arrived. The Complainant's name was noted on the Sales Order. The Sales Order also stated that identification was required on pickup of the merchandise.

[para 2] On January 30, 2007, the Complainant attended at the Organization's store to pick up the table. The Complainant paid the balance owing on the table with her own credit card.

[para 3] According to the Complainant, she was then asked for additional identification. The Complainant offered several cards but was told by the sales clerk that she needed the Complainant's driver's license. The Complainant then produced her driver's license but objected to the sales clerk recording information from her driver's license. However, information from her driver's license was recorded on an internal store document called a "pick ticket". The Organization states that only the Complainant's driver's license number was recorded on the pick ticket (I was not provided with a copy of the pick ticket by the Organization). The Complainant asked for the reason why she had to provide her driver's license and why the information was recorded. According to the Complainant, she was simply told that it was store policy.

[para 4] The Complainant was then escorted by the sales clerk to the area where she was to pick up the table. The sales clerk handed the sales receipt to another staff member at the loading area and told him to load the table into the Complainant's vehicle. The Complainant drove her vehicle to the loading area and the table was loaded. Then the staff member in the loading area asked the Complainant to sign an acknowledgement that she had picked up the table and asked her to fill in her license plate number. According to the Complainant, she questioned needing to provide her license plate number but was told that it was required. She was left with the impression that if she did not provide this information, she would not be able to leave with the table. She voiced her objection but provided the information to the staff member.

[para 5] According to the Organization, only the Complainant's driver's license number and license plate number were recorded, on separate pick tickets. It also claims that the staff members attempted to explain the Organization's policy to the Complainant. The Organization states that the Complainant agreed to provide her information.

[para 6] On February 6, 2007, the Complainant wrote to the Office of the Information and Privacy Commissioner (“this Office”) and requested an inquiry into this matter under the *Personal Information Protection Act* (“the Act”). A Notice of Inquiry was sent to the parties on April 22, 2008. Initial submissions from both parties were received by this Office and exchanged. The Complainant provided rebuttal submissions to this Office which were provided to the Organization.

## **II. RECORDS AT ISSUE**

[para 7] As this is a complainant about the collection of personal information, there are no records directly at issue in this matter.

## **III. ISSUES**

[para 8] In the Notice of Inquiry, the issues were framed as follows:

### **Issue A:**

Did the Organization collect the Complainant’s personal information in compliance with or in contravention of the Act?

In the present circumstances, it appears that answers to the following questions will help answer question 1. The parties may wish to address these questions in their submissions. They may also raise any other factual or legal points they regard as relevant.

1. Did the Organization collect the Complainant’s personal information in compliance with section 11 of the Act? (Section 11 provides that collection may be only for purposes that are reasonable and may only be done to the extent that is reasonable for meeting the purpose for which information is collected.)
2. Did the Organization collect the information in compliance with or in contravention of section 7(2) of the Act? (Section 7(2) prohibits an organization from requiring an individual to consent to collection as a condition of supplying a product or service beyond what is necessary to provide the product or service.)
3. Did the Organization collect the Complainant’s personal information in accordance with section 13 of the Act? (Section 13 requires an organization to provide the purposes for which the information is collected and the name of someone able to answers questions about the collection.)

[para 9] In addition, the Organization claims that this Office does not have jurisdiction over this matter as it does not involve the collection of personal information as defined by the Act. I will address this issue as a preliminary issue.

#### IV. DISCUSSION OF ISSUES

##### **Preliminary Issue: Did the Organization collect the Complainant's personal information?**

[para 10] According to the Organization, only the Complainant's driver's license number and license plate number were collected. These pieces of information were recorded on separate pick tickets which did not have the Complainant's name recorded on them. The Organization argues that these pieces of information, on their own, are not personal information as defined by the Act.

[para 11] Section 1(k) of the Act defines personal information as follows:

“personal information” means information about an identifiable individual

[para 12] While it is true that every individual could not look at drivers' license numbers and know whose license number it is, drivers' license numbers alone are still information about an identifiable individual. It is a unique number assigned to an individual. When searched using the appropriate database, it can easily be connected to a name, birth date, physical description and various other pieces of personal information. The same would be true of a license plate number, which, if searched, would reveal personal information about the person to whom the license plate number is registered.

[para 13] I was not provided with a copy of the pick tickets by the Organization as part of its submission. The Organization did advise that it collected this information which the organization believes is only usable by the police should a fraud investigation become necessary. Presumably, in order to make this information useful if necessary, there would have to be some way of searching it. Although the Complainant's name was not recorded on the pick tickets, presumably the invoice number for the sale was. This number could then lead the Organization back to the Sales Receipt and Sales Order which does have the Complainant's name on it. If the person picking up the merchandise was the customer, the pick ticket could link back to the sales order and receipt which contain the customer's name and address.

[para 14] I find support for my position that drivers' license or license plate numbers are personal information in Investigation Report P2005-IR-007 where it was found that drivers' license numbers are personal information as defined by the Act because the number is attributed to an identifiable individual (see Investigation Report P2005-IR-007 at paragraph 9).

[para 15] As well, although never clearly stated, in Investigation Report No. P2007-IR-006, the Federal Privacy Office and this Office operated under the premise that drivers' license numbers were personal information when they recommended that the Organization stop recording drivers' license numbers but allowed the Organization to continue collecting names and addresses of customers when they were returning merchandise under particular circumstances.

[para 16] Therefore, I find that drivers' license numbers and a license plate numbers, by themselves, are personal information as defined by the Act and that I have jurisdiction over this complaint.

**Issue A:**

**Did the Organization collect the Complainant's personal information in compliance with or in contravention of the Act?**

**1. Did the Organization collect the Complaint's personal information in compliance with section 11 of the Act?**

[para 17] Section 11 of the Act states:

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

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

[para 18] The Organization states that the purpose for collecting drivers' license numbers and license plate numbers of individuals picking up merchandise which was previously ordered or purchased is to assist customers and the police should fraud or theft allegations arise and to protect the company. The Organization states that it began collecting this information after incidents of "fraudulent pick ups of merchandise occurred". Although this is not explained, presumably, individuals were picking up items that were already paid for by the customer, and claiming to either be the customer or to be authorized by the customer to pick up the merchandise, when in fact they were stealing the merchandise. Accordingly, the Organization states, "In such cases, where the customer is not picking up merchandise at the time of purchase, it is necessary to protect both the customer and the company from situations where unauthorized individuals pick up merchandise which has been paid for by a customer."

[para 19] The Organization provided me with a revised procedure memo dated June 1, 2004 ("written policy memo") which states that in order to prevent incidences of fraud, when items are being picked up after the date of purchase, identification is required. This is reasonable, as the sales employee may not have been the employee that rang in the original sale and therefore confirming the identity of the individual picking up the item is a reasonable way of preventing fraud in this situation.

[para 20] Further, the Organization argues that by collecting only drivers' license numbers and not the names and addresses of those picking up merchandise, it has chosen the safest means of preventing fraud. This argument is based on the Organization's

contention that drivers' license numbers are useful only to the police and not to other people who may come into possession of this information inadvertently or dishonestly.

[para 21] In order to comply with section 11 of the Act it is necessary both to have a reasonable purpose for collecting personal information and the personal information collected must have a reasonable connection to meeting the purpose of the collection (see Order P2006-011 at paragraph 30).

[para 22] I agree that, in general terms, preventing fraud and theft is a reasonable purpose for collecting personal information. However, even if preventing fraudulent pick ups is a reasonable purpose for collecting personal information, I disagree that the Organization's current policy allows for collection of personal information, "only to the extent that is reasonable for meeting the purposes for which the information is collected" as required by section 11(2) of the Act.

[para 23] The Organization argues that its policy regarding collection is reasonable because it strikes a balance between protecting the would-be victim of fraud and limiting the amount of information collected. The Organization submits that it, "... collects information which is less intrusive than what many other retailers collect including the individual's name and personal contact information." This submission seems to be based on the notion that even if there is a privacy leak of this type of personal information, the information is useless in the hands of anyone except the police. I disagree.

[para 24] What is necessary to prevent fraudulent pick ups is to confirm the identity of the individual picking up the merchandise. That is, ensuring that the person picking up the item is either the customer that purchased the item or someone authorized by the customer to pick it up is the best way to prevent fraud in these instances.

[para 25] It could be argued that in extremely limited factual circumstances it could be useful to record personal information of the individual picking up the merchandise for the purpose of preventing fraud. In order for the information to be of assistance in preventing fraud by apprehending a thief all of the following would have to be true:

1. A thief would first have to take identification from someone who looked like him or her or whose identification was ambiguous enough to fool a store clerk examining it;
2. The thief would then have to know that the person whose identification he or she has acquired was authorized to pick up merchandise at a specific store; and
3. The person whose identification was acquired would have to know or know something about the person who used their identification in order to assist police.

[para 26] It is obvious that many variables that would have to fit into place before the recording of personal information would be at all helpful to the prevention of fraud. The

connection between these unlikely circumstances and the prevention of fraud is tenuous to the point of not being reasonably connected.

[para 27] Therefore, the policy of the Organization falls short of meeting the section 11(2) requirements. Recording individuals' drivers' license numbers or license plate numbers do not have a reasonable connection to helping prevent fraud. It goes beyond what is necessary for the purpose of preventing fraudulent pick ups, or confirming the identity of the person picking up the merchandise.

[para 28] As discussed below, I find the Orders from this Office dealing with recording of individual's drivers' license numbers when returning merchandise particularly helpful in this matter. The stated intended purpose in those matters was also to prevent fraud, though it was fraud in the sense of returning stolen merchandise and not picking up merchandise by claiming to be another person.

[para 29] The Organization cited Investigation Report P2005-IR-007 in its argument. This report was a result of a complaint by a customer that an Organization had collected his driver's license number in the course of a return. It was found that the recording of drivers' license numbers is contrary to section 11(2) and 7(2) of the Act.

[para 30] The Organization attempted to distinguish this case from the one at hand by stating that in Investigation Report P2005-IR-007, the Organization was recording the customers' names and addresses in the same place as their drivers' license numbers and therefore the drivers' license numbers were personal information. As I have already found that drivers' license and license plate numbers alone are personal information as defined by the Act, I find the rationale in this investigation report applicable to the case at hand and adopt the reasoning that drivers' license numbers should not be recorded to prevent fraud.

[para 31] In Investigation Report P2007-IR-006, the Alberta Information and Privacy Commissioner and the Federal Privacy Commissioner were jointly investigating the procedures of a large multinational corporation that was the victim of a security breach in which customers' information was accessed by unauthorized individuals. In their joint investigation the Commissioners commented on the Organization's practice of recording drivers' license numbers, names and addresses when individuals were returning merchandise. It did this in order to discourage fraud and to track customer return habits for indicators of fraudulent activities, such as frequent returns without receipts.

[para 32] The Commissioners found that although it was acceptable to collect names and addresses of customers returning items, it was not acceptable to record drivers' license numbers. They stated:

“...a driver's license number is an extremely valuable piece of data to fraudsters and identity thieves intent on creating false identification with valid information. After a drivers' license identity numbers have been compromised, they are difficult or impossible to change. For this reason, retailers and other

organizations should ensure that they are not collecting identity information unless it is necessary for the transaction.”

[para 33] In another Order of this Office, P2007-016, the Commissioner was responding to a complaint from an individual who had been asked to provide her driver’s license number to be recorded when she was returning merchandise. The Organization’s policy was to require this information when customers were returning or exchanging items and did not have a receipt or were asking for a refund in a different tender than the original purchase was being made. Following Investigation Report P2007-IR-006, the Commissioner confirmed that collecting drivers’ license numbers was not necessary to complete the return and ordered that the Organization cease the practice of recording this information.

[para 34] The statement by Federal Privacy Commissioner and the Alberta Information and Privacy Commissioner in Investigation Report P2007-IR-006 speaks directly to the Organization’s argument that it has chosen a safer and less intrusive way of preventing fraud than recording a name, address, or contact information from the person picking up the merchandise as the information it collects is only useful to the police and not to dishonest employees or thieves. Drivers’ license numbers are very sensitive pieces of information that are extremely valuable to fraudsters and identity thieves. Several Orders and Investigation Reports published by this Office have made it clear that collecting names and addresses in order to prevent fraud against an Organization is acceptable in some cases but the recording of drivers’ license numbers is not.

[para 35] Therefore the contention by the Organization that its policy of recording of drivers’ license numbers is safer and less invasive than collecting names and contact information runs contrary to prior findings of the Federal Privacy Commissioner and the Alberta Information and Privacy Commissioner.

[para 36] Based on the Investigation Reports and Orders that I have cited, I find that the recording of drivers’ license numbers by the Organization is not reasonable for the purposes of the collection and is contrary to section 11(2) of the Act.

[para 37] I find the same for the recording of license plate numbers of individuals picking up merchandise. In fact, the recording of this personal information has even less reasonable connection to meeting the purposes of the collection than the recording of drivers’ license numbers. As was pointed out by the Complainant in her submissions, she could have been driving someone else’s vehicle or a rental vehicle. It is unclear to me, how recording that information would assist in the stated purpose of preventing fraudulent pick ups, as there is no way of confirming the identity of the individual at the time of the pick up by looking at the license plate number or by recording it so as to determine the owner through a registry search.

[para 38] As well, as pointed out by the Complainant, the Organization did not follow its own policy regarding the recording of her license plate number or license plate numbers in general. According to the written policy memo, the acceptable types of



identification for pick tickets are, “Drivers Licence, Health Card with photo, Passport, Native Status Card, Canadian Citizenship Card, Senior Citizens Card, Military identification with photo, Fire Arms Registration Card and Valid Major Credit Card (Visa, MasterCard or American Express)”.

[para 39] Although the specific complainant before me is regarding drivers’ license numbers and license plate numbers, I feel that the recording of any identifying numbers on the picture or other identification listed would pose the same problems with section 11(2) as drivers’ license numbers do.

[para 40] I find it is reasonable for the Organization to examine the identification produced to verify the identity of the person picking up the merchandise and then note that the identification was produced and examined without recording personal information from the identification (see Order P05-01).

**2. Did the Organization collect the information in compliance with or in contravention of section 7(2) of the Act?**

[para 41] Section 7(2) of the Act states:

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

[para 42] It is clear from the written policy memo that the Organization would not have allowed the Complainant to take the table from the store unless she provided the Organization with her driver’s license number. It is also clear from the Organization’s submission that it would not have allowed the Complainant to drive away with the table without the Complainant providing her license plate number.

[para 43] The Organization argues that section 7(2) of the Act is not applicable in this instance because its purchase contract was with the customer and not the Complainant and the Organization was under no obligation to release the furniture to the Complainant. Therefore, it submits that the Organization has no obligation to the Complainant under section 7(2) of the Act.

[para 44] Section 7(2) of the Act makes no mention of there needing to be a contractual obligation for there to be a breach of that section. Nor does it use the terminology “customer” or anything similar. Section 7(2) simply states that an organization cannot refuse to supply a product or service because an individual refuses to disclose personal information that is not necessary to provide the product or service.

[para 45] The wording of section 7(2) is very broad and I believe that it encompasses any individual seeking a product or a service from the Organization, not just those individuals that have an existing contractual relationship.

[para 46] While it is true that the Organization did not have to release the table to the Complainant, its reason for not doing so would be because the Complainant refused to supply her personal information and not because it is policy not to release items to people who are not the customer. That makes the Organization in violation of section 7(2) of the Act, just as it would if it was the customer who attempted to pick up the item and the Organization required the recording of her driver's license number or license plate number.

[para 47] The Organization further points out that the Complainant could have declined to pick up the customer's merchandise and it would have released the item to the customer when she came to pick it up. This would involve ignoring the policy that requires a customer, picking up merchandise after the date of sale, to provide personal information such as drivers' license numbers. In any event, I have found that section 7(2) of the Act uses the term individual, which is much broader than customer, so this is not a valid argument.

[para 48] In my view the key to section 7(2) of the Act is defining what is necessary to provide the product or service. Prior orders have found that the term "necessary" in section 7(2) of the Act does not mean "indispensable" in the sense that a transaction could not be completed but for the collection of personal information. As the Commissioner stated in Order P2007-016:

"...if an organization can demonstrate that collection of personal information is necessary to enable it to meet a reasonable purpose relating to a transaction, such as to protect itself against fraud, then the collection may be a necessary condition for the purposes of section 7(2)."

[para 49] Section 7(2) of the Act must be read in the context of section 11 of the Act (see Order P2006-011 at paragraph 45). As I have found above that the recording of drivers' license numbers and license plate numbers are not reasonably connected to the prevention of fraud under section 11(2) of the Act, I also find that the recording of Complainant's driver's license number and license plate number is not necessary to meet the purpose of prevention of fraud in the purchase and pick up of merchandise.

[para 50] The Organization also submits that there was not a violation of section 7 by virtue of section 7(3) of the Act. It stated:

"[The Organization] relies on the terms of the Policy which is posted and provides notice to customers of the requirement of pick up of merchandise if the customer is not picking up the merchandise on the date the sales contract is concluded. It is submitted that this notice meets the requirements of section 7(3) and other applicable sections of PIPA"

[para 51] I believe that the Organization meant to state that there is no violation of section 7 by virtue of section 8(3) of the Act which states:

8(3) Notwithstanding section 7(1), an organization may collect, use or disclose personal information about an individual for particular purposes if

- (a) the organization
  - (i) provides the individual with a notice, in a form that the individual can reasonably be expected to understand, that the organization intends to collect, use or disclose personal information about the individual for those purposes, and
  - (ii) with respect to that notice, gives the individual a reasonable opportunity to decline or object to having his or her personal information collected, used or disclosed for those purposes,
- (b) the individual does not, within a reasonable time, give to the organization a response to that notice declining or objecting to the proposed collection, use or disclosure, and
- (c) having regard to the level of the sensitivity, if any, of the information in the circumstances, it is reasonable to collect, use or disclose the information as permitted under clauses (a) and (b).

[para 52] Giving notice cannot save an Organization where it is found that it has collected information in violation of section 11 (see Order P2006-011).

[para 53] As well, I have already found that the Organization was in violation of section 7(2) of the Act. Compliance with section 8(3) of the Act does not allow the Organization to contravene section 7(2) of the Act.

[para 54] Finally, even if proper notice had been given, both the submissions of the Organization and the Complainant indicated that the Complainant did in fact object to the collection.

[para 55] For these reasons, I find that section 8(3) of the Act does not assist the Organization in this case.

**3. Did the Organization collect the Complainant's personal information in accordance with section 13 of the Act?**

[para 56] Section 13 of the Act states:

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

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

(b) of the name of a person who is able to answer on behalf of the organization the individual's questions about the collection.

(2) Before or at the time personal information about an individual is collected from another organization with the consent of the individual, the organization collecting the information must notify the organization that is disclosing the information that the individual has consented to the collection of the information.

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

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

[para 57] Although not addressing section 13 of the Act directly, the Organization submits that it relies on the terms of its policy in situations such as the one we are dealing with. The Organization also states that its policy is posted, though it is not clear where, and it indicates on the Sales Order that identification is required on pick up of merchandise. The Organization submits that this is adequate notice.

[para 58] I am not certain where the policy is posted or in what form it is posted. If the Organization is referring to the statement on the Sales Order or the written policy memo, even if this is posted where individuals were made aware of it, it would not be adequate notice under section 13. The one line on the Sales Order that says identification is required on pick up does not fulfill any requirements of section 13 of the Act as it does not explain the purpose for the collection. The written policy memo does state why the information is collected but does not give the name of a person who could answer questions about the collection. Therefore, if the Organization is relying on some form of posting of the written policy memo in order to fulfill its obligations under section 13(1), I find that it has not done so.

[para 59] Section 13(1) does also allow for notice to be given orally. The Complainant claims that the only reason she was given for the collection of her personal information was that it is store policy. If this is the case, this does not fulfill the requirements of section 13(1). The Organization states that staff attempted to explain the Organization's policy to the Complainant. It did not provide any specifics of what was explained to the Complainant, including if the reason for the policy was given or if the name of a contact person was given.

[para 60] As the Complainant has fulfilled her evidential burden of proof that her personal information was collected in such a manner as to bring into question if the collection was done in accordance with the Act, it falls to the Organization to prove that the personal information was collected in accordance with the Act. I find that the Organization has failed to meet this legal burden as far as compliance with section 13 is concerned.

## **V. ORDER**

[para 61] I make this Order under section 52 of the Act.

[para 62] I order the Organization to cease recording drivers' license numbers and license plate numbers when an individual is picking up merchandise.

[para 63] I order the Organization to destroy all drivers' license numbers and license plate numbers recorded from individuals picking up merchandise from the Organization.

[para 64] I order the Organization to notify me in writing, within 50 days of its receipt of a copy of this Order, that it has complied with my Order.

Keri H. Ridley  
Adjudicator