

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDERS P2009-006 & P2009-007

December 11, 2009

**SERVUS CREDIT UNION &
REALTY EXECUTIVES SYNERGY**

Case File Numbers P0857 & P0866

Office URL: www.oipc.ab.ca

Summary: The Complainant made a complaint under the *Personal Information Protection Act* (PIPA) that Servus Credit Union (Servus) had disclosed his personal information to a realtor from Realty Executives Synergy (Synergy) without his consent. In addition, he complained that Synergy had collected his personal information contrary to sections 7(1)(a) and (b) of PIPA.

The Adjudicator found that Servus had disclosed the Complainant's personal information to Synergy without his consent, contrary to section 7(1)(d) of PIPA. In addition, she found that Synergy had collected the Complainant's personal information without his consent, and from someone other than the Complainant, contrary to sections 7(1)(a) and (d) of PIPA. She ordered Servus to cease disclosing personal information contrary to section 7(1)(d) and ordered Synergy to cease collecting information contrary to sections 7(1)(a) and (b).

Statutes Cited: AB: *Personal Information Protection Act* S.A. 2003, c. P-6.5 ss. 1, 5, 6, 7, 8, 14, 52

Authorities Cited: AB: Order P2006-008
Sopinka, John, et al. *The Law of Evidence in Canada* 2nd ed. Markham: Butterworths, 1999.

Cases Cited: *University of Alberta v. Alberta (Information and Privacy Commissioner)* 2009, ABQB 112

I. BACKGROUND

[para 1] On December 11, 2007, the Complainant made a complaint to this office that Servus Credit Union (Servus) had disclosed his personal information to a realtor from Realty Executives Synergy (Synergy) contrary to sections 7 and 8 of PIPA. In addition, he complained that Synergy had collected his personal information contrary to sections 7, 8, and 14 of PIPA.

[para 2] The Commissioner authorized mediation to resolve the dispute. As mediation was unsuccessful, the matter was scheduled for a written inquiry.

[para 3] Both Servus and Synergy provided written submissions. The Complainant did not provide written submissions. However, at the request of the Complainant, I decided to conduct a portion of the inquiry orally. An oral inquiry was scheduled to take place on September 15 and September 16, 2009 with the agreement of all the parties.

[para 4] On September 14, 2009, the Complainant wrote this office to explain that he could not attend the hearing and requested that it be rescheduled. He did not provide a reason for not attending the hearing, although he had confirmed his availability for the hearing on June 22, 2009. I decided to cancel the oral portion of the inquiry, but provided the Complainant until September 29, 2009 to provide any submissions he wished to make for the inquiry. I indicated that submissions could be made in writing, or as an audio recording. However, the Complainant did not provide submissions beyond the initial complaint.

[para 5] On October 6, 2009, I provided Servus and Synergy the opportunity to provide additional written submissions for the inquiry. However, neither organization provided any additional submissions.

[para 6] In this order, I will refer to the realtor to whom the Complainant refers to as “my former realtor agent” as the “former realtor”. I will refer to the realtor who provided a statutory declaration on behalf of Synergy as “the deponent”. Both the former realtor and the deponent are realtors who are agents for Synergy.

II. RECORDS AT ISSUE

[para 7] As the issue is a complaint that Servus disclosed the Complainant’s personal information to Synergy and that Synergy collected the Complainant’s personal information from Servus, there are no records at issue.

III. ISSUES

Issue A: Did Servus Credit Union disclose the Complainant’s personal information contrary to, or in compliance with, section 7(1)(d) of PIPA (no disclosure without either authorization or consent)?

Issue B: Did Realty Executives Synergy collect the Complainant’s personal information contrary to, or in compliance with, section 7(1)(a) of PIPA (no collection without either authorization or consent)?

Issue C: Did Realty Executives Synergy collect the Complainant’s personal information contrary to, or in compliance with, section 7(1)(b) of PIPA (no collection from a source other than the individual without either authorization or consent)?

IV. DISCUSSION OF ISSUES

[para 8] In Order P2006-008, the Commissioner explained the burden of proof in relation to complaints made under PIPA in the following way:

Relying on these criteria in Order P2005-001, I stated that a complainant has to have some knowledge of the basis of the complaint and it made sense to me that the initial burden of proof can, in most instances, be said to rest with the complainant. An organization then has the burden to show that it has authority under the Act to collect, use and disclose the personal information. This initial burden is what has been termed the “evidential burden”. As I have said, it will be up to a complainant to adduce some evidence that personal information has been collected, used or disclosed. A complainant must also adduce some evidence about the manner in which the collection, use or disclosure has been or is occurring, in order to raise the issue of whether the collection, use or disclosure is in compliance with the Act.

[para 9] The authors of *The Law of Evidence* 2nd Edition describe the evidential burden in the following way:

A party... may satisfy an evidential burden without doing anything; for example, a witness called by the Crown testifies to facts, which raise the issue of self-defence. Thus, a party may discharge an evidential burden by pointing to some evidence already on the record. In these circumstances, the defendant does not adduce evidence but rather, the issue is raised by the evidence... The term “evidential burden” means that a party has the responsibility to insure that there is sufficient evidence of the existence or non-existence of a fact or of an issue on the record to pass the threshold test for that particular fact or issue.

[para 10] In *University of Alberta v. Alberta (Information and Privacy Commissioner)* 2009, ABQB 112, Yamauchi J. agreed with the Commissioner’s approach in Order P2006-008. He said at paragraph 108:

But see, Order P2006-008: *Lindsay Park Sports Society* (March 14, 2007) at paras. 9-21, where the OIPC said that complainants under FOIPPA do not have a legal burden, but an evidential burden. Once the complainant satisfies the evidential burden, the burden shifts to the public body to show “that it has the authority ... to collect, use or disclose personal information,” at para. 20. Because of FOIPPA’s structure, this Court agrees with the *Lindsay Park* analysis of the burden of proof and evidentiary burden.

[para 11] A complainant bears the initial burden of adducing or pointing to evidence that establishes his or her information was collected, used or disclosed, depending on the nature of the complaint. In the present case, the Complainant alleges that Servus disclosed his personal information to his former realtor, who is an agent of Realty Executives Synergy.

[para 12] In deciding this issue, I must first consider whether the evidence before me establishes that Servus disclosed the personal information of the Complainant to Synergy.

[para 13] In his letter of complaint dated December 10, 2007, the Complainant states:

On November 19, 2007 my former realtor agent ... called me at work and said that "I already talked to [Servus] and they said you already have enough money in your account and you have been approved for a mortgage". The way she talked really strong and sounds like she knew a lot about our personal information.

The following day I called [a Servus financial advisor] who is in charge of my mortgage file and asked her why our personal and financial information were disclosed to our former realtor agent... She does not have any authority to have access and be informed of my personal information...

On November 22, [a Servus Branch Manager] called to inform me that [a Servus financial services manager] was the person who released your information...

[para 14] In its submissions, Servus provides the following account of events giving rise to the complaint:

On November 22, [a Servus branch manager] contacted the Complainant and told him that no one from the branch had spoken to [the former agent], but that [a Servus financial services manager] had spoken to [the deponent] and she informed him everything is okay but no other details were given out". [emphasis mine]

[para 15] Servus further argues:

A Servus employee, [a financial services manager] did speak to [the deponent]. However, [the financial services manager] states that she did not disclose any personal information about [the Complainant] to [the deponent]. She told him "that there may have been a misunderstanding". The statement does not disclose what is misunderstood, nor does it even say that there had been a misunderstanding. [The financial services manager] states that she even told [the deponent] to have the Complainant contact the branch, indicating her knowledge and consideration of the privacy aspects of the discussion. [emphasis mine]

[para 16] A letter dated December 13, 2007 from a Servus branch manager states:

[The financial services manager] stated she did not talk to the Complainant's realtor however she did [talk] to the [the deponent]; and she communicated everything is okay but no details [were] offered. [emphasis mine]

[para 17] An email from a Servus financial services manager states:

I believe it was back in late October or early November that I received a call from [the deponent]. He called to say that [the Complainant] called him and asked for him as the credit union was foreclosing on his property. [He] asked [me if] we could hold off on the foreclosure because he was going to help find [the Complainant] another lender. I told him that I would check and call him back. I called him back to say that there may have been a misunderstanding and that [the Complainant] should contact the person in charge of his file if he has any questions. That was the extent of my conversation with [the deponent]. As for [the former realtor], I have never had any contact with her. [emphasis mine]

[para 18] A statutory declaration of the partner of the former realtor recounts a telephone conversation with the Servus financial services manager. He states:

I contacted [the financial services manager] at Servus Credit Union and was told ... that to the best of her knowledge there would be no problem in working with [the Complainant's] security and mortgage debt, but that she could not disclose information to me and that if [the Complainant] had concerns regarding his mortgage debt, he should contact her directly, or [someone] else at the Branch to discuss his personal situation.

I telephoned the Complainant back and gave him that information regarding my conversation with [the financial services manager].

[para 19] While the Complainant did not submit evidence, beyond his initial complaint, both Servus and Synergy submitted evidence, and so there is evidence on the record that the following information was exchanged between the financial services manager and the deponent:

- The deponent asked the Servus financial services manager not to foreclose on the Complainant's property as he was attempting to obtain alternative financing for him.
- According to Servus's arguments and the statement of the Servus branch manager, the Servus financial services manager replied that "everything was okay."
- According to the email of the financial services manager and Servus's arguments, the financial services manager replied that "there may have been a misunderstanding."
- According to the deponent's statutory declaration the Servus financial services manager told the deponent that "to the best of her knowledge there would be no problem in working with [the Complainant's] security and mortgage debt."
- According to the Servus financial services manager and the deponent, the Servus financial services manager told the deponent that "the Complainant should contact her directly about his mortgage."

[para 20] The accounts of the branch manager, the financial services manager and the deponent differ as to what was said to a certain extent. Servus has not explained the

differences between the branch manager's and financial services manager's account of the conversation taking place between the financial services manager and the deponent. Moreover, in its arguments, it takes the position that both statements were made. Further, Servus does not take issue with the deponent's account of the conversation. I find that these differences in accounts can be reconciled as different recollections of what was said. In any event, all statements attributed to the financial services manager are similar in the sense that they appear intended to correct the deponent's understanding that Servus intended to foreclose.

[para 21] I must now consider whether the information I have found was disclosed during this conversation is the personal information of the Complainant under PIPA.

[para 22] Personal information is defined by section 1(k) of PIPA. It states:

1 In this Act,

...

(k) "personal information" means information about an identifiable individual...

[para 23] I find that one can learn the following personal information about the Complainant from the information that Servus and Synergy acknowledge was disclosed:

- According to all accounts, the Complainant has a mortgage with Servus and is a client of Servus.
- According to the branch manager's account, the status of the Complainant's mortgage is okay.
- According to the financial service manager's account, the Complainant may have misunderstood that Servus was taking steps to foreclose on his property.
- According to the deponent's account, the Complainant's security and mortgage debt is not a bar to obtaining new financing.

It does not matter whether the financial services manager telephoned the deponent to tell him that "everything is okay" and "there may be a misunderstanding" as argued by Servus, or "to the best of my knowledge there would be no problem in working with [the Complainant's] security and mortgage debt," as the evidence of Synergy indicates. All these statements disclose information about the Complainant as an identifiable individual and is personal information as defined by section 1(k) of PIPA.

[para 24] The email of the financial services manager indicates that she said "There may be a misunderstanding and the Complainant should contact me about his mortgage" in response to the realtor's request that Servus hold off taking foreclosure action. The statement of the Servus branch manager states that the financial services manager said:

“Everything is okay” without providing additional details, in response to the realtor’s statement that Servus should delay before taking foreclosure action. These statements would enable the deponent to learn that the Complainant’s financial situation was better than he had previously thought. Further these statements would also enable the deponent to learn that the Complainant has a mortgage with Servus and that the Complainant may have misunderstood that Servus intended to foreclose.

[para 25] If the financial services manager said “to the best of my knowledge there would be no problem in working with [the Complainant’s] security and mortgage debt,” as the deponent states that she did in his statutory declaration, then this statement would provide the realtor with information to the effect that the Complainant had both security and mortgage debt, and that neither was a bar for the Complainant obtaining additional financing from Servus.

[para 26] For the reasons above, I find that Servus disclosed the personal information of the Complainant to the deponent. I must therefore consider whether Servus complied with section 7(1)(d) of PIPA when it did so. Section 7(1)(d) states:

7(1) Except where this Act provides otherwise, an organization shall not, with respect to personal information about an individual,
(d) disclose that information unless the individual consents to the disclosure of that information.

[para 27] The position of Servus is that it did not disclose the personal information of the Complainant. This position is based on its view that the statements it claims that the financial services manager made do not disclose the Complainant’s personal information. However, I have found that these statements do disclose the Complainant’s personal information. Servus has not provided any argument or evidence to establish that it obtained the Complainant’s consent under section 8 of PIPA to disclose the Complainant’s personal information to Synergy. Instead, Servus’s and Synergy’s evidence is that the deponent was told to tell the Complainant to contact Servus to obtain information relating to his mortgage as the financial services manager could not discuss it with the deponent. These statements indicate that Servus was aware that consent was required to disclose the Complainant’s personal information, and was also aware that it did not have the requisite consent. I therefore find that the Complainant did not provide consent to Servus to disclose his personal information and I therefore find that Servus contravened section 7(1) of PIPA when it disclosed the Complainant’s personal information to Synergy.

[para 28] Servus provided a copy of its privacy policy for my review. I note that this policy defines personal information in the following way:

Personal information includes any factual or subjective information that is about or can be linked to an identifiable individual. This may include:

- age, name, ID numbers, income, ethnic origin;
- opinions, evaluations, comments, social status or disciplinary actions; and

- employee files, credit records, loan records, medical records, existence of a dispute between consumer and merchant, intentions (e.g. to acquire goods or services, or change jobs)...

Principle 3 of this policy states that Servus will require the knowledge and consent of the client for the collection, use, or disclosure of personal information, except in specific limited circumstances.

[para 29] Within the terms of Servus’ privacy policy, comments or subjective opinions about an identifiable individual or that may be linked to an identifiable individual are the personal information of the individual. Statements such as “everything is okay” and “he may have misunderstood” in response to the statements of the realtor that he understood Servus was taking steps to foreclose, communicate comments and opinions about, or that can be linked to, the Complainant. Consequently, these statements are not only personal information as defined by PIPA, but personal information as defined by Servus’s privacy policy. Further, none of the limited, specific circumstances set out in Servus’s privacy policy for disclosing the Complainant’s personal information without his consent are present. The disclosure of the Complainant’s personal information is therefore contrary to Servus’s privacy policy, in addition to section 7(1)(d) PIPA.

Issue B: Did Realty Executives Synergy collect the Complainant’s personal information contrary to, or in compliance with, section 7(1)(a) of PIPA (no collection without either authorization or consent)?

[para 30] Section 7(1)(a) of PIPA prohibits an organization from collecting personal information without the consent of the individual. It states:

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...

[para 31] Section 8 establishes the form of consent. It states, in part:

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.

(2) An individual is deemed to consent to the collection, use or disclosure of personal information about the individual by an organization for a particular purpose if
(a) the individual, without actually giving a consent referred to in subsection (1), voluntarily provides the information to the organization for that purpose, and
(b) it is reasonable that a person would voluntarily provide that information.

[para 32] Section 14 of PIPA establishes the circumstances in which an organization does not require consent to collect an individual's personal information. It states:

14 An organization may collect personal information about an individual without the consent of that individual but only if one or more of the following are applicable:

- (a) a reasonable person would consider that the collection of the information is clearly in the interests of the individual and consent of the individual cannot be obtained in a timely way or the individual would not reasonably be expected to withhold consent;*
- (b) the collection of the information is pursuant to a statute or regulation of Alberta or Canada that authorizes or requires the collection;*
- (c) the collection of the information is from a public body and that public body is authorized or required by an enactment of Alberta or Canada to disclose the information to the organization;*
- (d) the collection of the information is reasonable for the purposes of an investigation or a legal proceeding;*
- (e) the information is publicly available;*
- (f) the collection of the information is necessary to determine the individual's suitability to receive an honour, award or similar benefit, including an honorary degree, scholarship or bursary;*
- (g) the information is collected by a credit reporting organization to create a credit report where the individual consented to the disclosure to the credit reporting organization by the organization that originally collected the information;*
- (h) the information may be disclosed to the organization without the consent of the individual under section 20;*
- (i) the collection of the information is necessary in order to collect a debt owed to the organization or for the organization to repay to the individual money owed by the organization;*
- (j) the organization collecting the information is an archival institution and the collection of the information is reasonable for archival purposes or research;*
- (k) the collection of the information meets the requirements respecting archival purposes or research set out in the regulations and it is not reasonable to obtain the consent of the individual whom the information is about.*

[para 33] Synergy argues that the following are the facts of the case:

[The Complainant] asked [the former realtor's partner and the former realtor] to assist him in refinancing his mortgage debt and gave [the former realtor's partner] details of his existing mortgages with a view to [the two realtors] attempting to secure different financing until [the Complainant] had managed to sell his previous residence. As a part of the process and in an attempt to find alternate financing, [the former realtor's partner] contacted [the financial services manager] at Servus Credit Union to determine whether Servus was willing to work with [the Complainant] to refinance his credit.

[The financial services manager] declined to provide personal information regarding [the Complainant] and suggested that if [he] wanted any details about refinancing his credit that he should contact the branch directly.

In summary, no personal information was provided to Synergy by Servus Credit Union and no personal information was obtained by Synergy except as provided verbally by [the Complainant] or [consented] to by [the Complainant] in direct relation to his relationship with [the former realtor] and [the former realtor's partner] as his listing and purchasing Realtors.

[para 34] Synergy argues that the Complainant verbally consented to the request for personal information from various mortgage brokers including Servus Credit Union, but that at no time did Servus disclose any personal information belonging to the Complainant. Synergy provided a statutory declaration of the realtor who spoke with Servus in support of its argument. The statutory declaration states:

I am [a] Realtor with Realty Executives-Synergy and have personal knowledge of the matters deposed to. [The Complainant] was a client of my partner [the Complainant's former realtor] and myself pursuant to a listing agreement, and also as a buyer of another property. Over the course of our relationship he had authorized us verbally several times to obtain services of mortgage brokers and to assist him in obtaining mortgages which required him to disclose to us personal financial information including the balances owing on his existing mortgages.

[The former realtor] and I work as a team and [the Complainant] is well aware of this.

...

When I spoke to [the Complainant] about his frustration about not being able to sell his house after he had bought another house, which was putting him in financial distress, he gave me the balances owing on his loans. He implied that Servus Credit union would be foreclosing on him as he did not have the funds to service all of the mortgage debt he was holding, after he bought the new home.

I contacted [the financial services manager] at Servus Credit Union and was told ... that to the best of her knowledge that there would be no problem in working with [the Complainant's] security and mortgage debt, but that she could not disclose information to me and that if [the Complainant] had concerns regarding his mortgage debt, he should contact her directly, or [someone] else at the Branch to discuss his personal information.

I telephoned [the Complainant] back and gave him that information regarding my conversation with [the financial services manager].

I am advised by my partner [the Complainant's former realtor] and do verily believe that [the Complainant] and his family had previously borrowed funds from her and rather than refinancing with banks, they were requesting [the Complainant's former realtor] to further extend credit and funding to him rather than refinancing his existing mortgage loans.

I am advised by [the Complainant's former realtor] that she refused to extend further funds and loans to [the Complainant] or his family.

Most importantly, [the Complainant] consented in writing to Realty Executives – Synergy obtaining personal information relating to the listing agreement with Synergy (which would include mortgage balances with Servus Credit Union to determine, for example, minimum sale prices) and all matters consistent with that listing contract. See paragraph 12 of the listing agreement attached.

[para 35] I find that the statutory declaration contradicts Synergy's argument that the personal information of the Complainant was not disclosed to it, given that the deponent states that he was told that there would be no problems working with the Complainant's security and mortgage debt. Further, I find that the argument that the Complainant authorized the deponent verbally to contact Servus on his behalf is not supported by the statutory declaration.

[para 36] The statutory declaration states that "over the course of our relationship [the Complainant] had authorized [Synergy] verbally several times to obtain services of mortgage brokers and to assist [the Complainant] in obtaining mortgages." The statutory declaration does not say that the Complainant authorized the realtor to contact Servus and to negotiate with it on his behalf on this occasion. The deponent suggests that because the Complainant had previously requested his help to obtain a mortgage broker, and because the Complainant had previously disclosed personal information to the realtor, that he authorized the realtor to speak to Servus and to collect any personal information arising from that conversation. I am unable to conclude that any previous disclosures of personal information made by the Complainant to the deponent provide oral or written consent to contact Servus to discuss the Complainant's mortgage, particularly as I have not been told the particulars of the previous disclosures or authorizations.

[para 37] Synergy provided a copy of the "Canadian Real Estate Association 2002 Privacy Policy" to which it adheres. I note that this policy was created prior to the coming into force of PIPA and that point 4 of "Principle 3 – Obtaining Consent" of this document states:

Express consent should be obtained whenever practical. However, consent may be implied for the collection, use and disclosure of personal information in accordance with the known expectations of a particular individual or in terms of what a reasonable person in similar circumstances would likely believe necessary, or where express consent is not practical and where information would not, in the circumstances, be considered sensitive.

This policy statement is contrary to sections 7 and 8 of PIPA to the extent that it suggests consent may be obtained by implication in circumstances other than those contemplated by section 8, and that consent is implied where consent is not practical and information is not considered sensitive. Where consent is required to collect, use, or disclose information under PIPA, consent must comply with section 8. Section 8(1) establishes that the form of consent must be written or oral, unless the individual has voluntarily provided the information for a particular purpose under section 8(2), or the organization has provided notice of its intent to collect, use, or disclose personal information for a particular purpose and the individual has not objected under section 8(3). Under PIPA, assuming that an individual would want the organization to collect, use or disclose his or her information based on previous experience does not amount to consent for the purpose of section 7, nor does assuming that information is not "sensitive".

[para 38] The deponent recounts his conversation with the Complainant as follows:

When I spoke to the Complainant about his frustration about not being able to sell his house after he had bought another house, which was putting him in financial distress, he gave me the balances

owing on his loans. He implied that Servus Credit Union would be foreclosing on him as he did not have the funds to service all of the mortgage debt that he was holding, after he bought the new home.

[para 39] I find that these statements attributed to the Complainant do not amount to authorization from the Complainant to contact Servus on his behalf to discuss potential foreclosure proceedings or obtain information about them. Further, I find that these statements attributed to the Complainant do not amount to consent for Synergy to collect his personal information from Servus.

[para 40] The deponent also states that the listing agreement entered between the Complainant and Synergy provides authorization to contact Servus and to obtain mortgage balances. I will therefore consider whether the listing agreement establishes the Complainant's consent to the collection of his personal information from Servus.

[para 41] The listing agreement is a contract between the Complainant as seller and Synergy as a real estate brokerage. The deponent suggests that paragraph 12 of the listing agreement authorized him to collect information from Servus regarding mortgage balances to determine minimum sale prices for the property. However, I need not consider whether paragraph 12 of the listing agreement authorizes a brokerage to obtain a seller's mortgage balance from the seller's banking institution. According to the term of the listing agreement, it expired at 11:59 PM on July 30, 2007. As the listing contract had clearly expired in accordance with its terms at least two months prior to the telephone conversation taking place between Servus and the deponent, section 12 of the listing agreement cannot provide the requisite authorization to collect information in this case.

[para 42] In addition, the email of the financial services manager of Servus states that the realtor contacted her and asked her to hold off on the foreclosure because he was going to help the Complainant find another lender. This email does not state that the realtor asked about the Complainant's mortgage balance or sought to collect that information, and neither does the realtor's statutory declaration. The only evidence as to what the deponent told Servus is the email of the Servus financial services manager. As that evidence is uncontested, I find that the deponent asked Servus not to foreclose on the Complainant's property and did not ask for the Complainant's existing mortgage balance. Further, the statutory declaration is clear that the deponent had already obtained the amounts of the existing loans from the Complainant. As there would be no reason to contact Servus to obtain that information again, I find it unlikely that this was the information that was sought.

[para 43] I have already found that Synergy did not obtain written or oral consent to collect the Complainant's personal information for the purposes of section 8(1). Further, under section 8(2) of PIPA, consent to collection is deemed only when the individual who is the subject of the information voluntarily provides the information. In the circumstances of this case, while the Complainant did voluntarily provide information about his loans to the deponent, it was Servus and not the Complainant that provided the information at issue regarding the status of the Complainant's mortgage. Consequently, section 8(2) does not apply. Section 8(3) does not apply, as it applies to the situation

when an organization provides notice that it intends to collect personal information for a particular purpose. There is no evidence to suggest that Synergy provided notice to the Complainant of its intention to collect his personal information or its purpose in doing so. Consequently, when Synergy collected the Complainant's personal information from Servus, it did so without obtaining the Complainant's consent under section 8.

[para 44] As set out above, section 14 of PIPA establishes the situations in which consent is not required to collect personal information. Section 14(1)(a) establishes that it is not necessary to obtain consent to collect personal information if a reasonable person would consider that the collection of the information is clearly in the interests of the individual *and* consent cannot be obtained in a timely manner *or* the individual would not be expected to withhold consent. As it is possible that Synergy was considering this provision when it argued that the Complainant's prior authorizations to give his personal information to mortgage brokers amounted to consent, I will consider whether section 14(1)(a) applies.

[para 45] I find that a reasonable person would not consider the collection of personal information from Servus clearly in the Complainant's interests, given that the deponent has not stated what purpose he had in contacting Servus and collecting the Complainant's personal information. Further, given that the deponent had spoken to the Complainant prior to contacting Servus, there was no reason not to obtain the Complainant's consent at that time. Finally, as the deponent states that he and the Complainant's former realtor work as a team, and that the former realtor was also a creditor of the Complainant from whom the Complainant was seeking further funds, as opposed to refinancing with Servus, there appear to be reasons why the Complainant would withhold consent from the deponent if the deponent had asked him whether he could contact Servus to obtain his financial information.

[para 46] Synergy has not established that it obtained the Complainant's oral or written consent to collect his personal information from Servus. Further, I find that none of the circumstances set out in section 14 apply to negate the consent requirement. I therefore find that Synergy contravened section 7(1)(a) of PIPA when it collected the Complainant's personal information during the telephone call made to Servus.

Issue C: Did Realty Executives Synergy collect the Complainant's personal information contrary to, or in compliance with, section 7(1)(b) of PIPA (no collection from a source other than the individual without either authorization or consent)?

[para 47] Section 7(1)(b) of PIPA prohibits an organization from collecting personal information from a source other than the individual who is the subject of the information. It states:

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

(b) collect that information from a source other than the individual unless the individual consents to the collection of that information from the other source...

[para 48] I have already found that Synergy collected the personal information of the Complainant from Servus without his consent. As I have found that Synergy collected the Complainant's personal information from Servus, it follows that I find that it did not collect the personal information from the individual who is the subject of the information, as required by section 7(1)(b). I therefore find that Synergy contravened section 7(1)(b) of PIPA when it collected the Complainant's personal information from Servus without his consent.

[para 49] The evidence of Synergy raises the issue of whether the deponent disclosed the Complainant's personal information to the Complainant's former realtor without his consent. The evidence of both Servus and Synergy also raises the issue of whether the deponent disclosed the personal information of the Complainant to Servus without the Complainant's consent. However, as these issues were not identified for the inquiry and as the parties have not made submissions in relation to them I will not address them in this order. This order does not preclude the Complainant from pursuing these issues in the future if he chooses.

V. ORDER

Order P2009-006

[para 50] I make this Order under section 52 of the Act.

[para 51] I order Servus to stop disclosing the personal information of the Complainant in contravention of section 7(1)(d) of PIPA.

[para 52] I impose the following term on Servus: Servus is to ensure that it does not disclose the Complainant's personal information in contravention of section 7(1)(d) of PIPA by reviewing its privacy policy with its employees and managers, as per section 6(a) of PIPA.

[para 53] I further order Servus to notify me, in writing, within 50 days of receiving a copy of this Order that it has complied with the Order.

Order P2009-007

[para 54] I order Synergy to stop collecting the personal information of the Complainant in contravention of sections 7(1)(a) and (b) of PIPA.

[para 55] I impose the following term on Synergy: Synergy is to ensure that it does not collect the personal information of the Complainant in contravention of section

7(1)(a) and (b) of PIPA by ensuring that its employees and agents are made aware of Synergy's obligations under PIPA, as per section 6(a) of PIPA

[para 56] I further order Synergy to notify me, in writing, within 50 days of receiving a copy of this Order that it has complied with the Order.

Teresa Cunningham
Adjudicator