

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER P2012-01

March 22, 2012

YELLOW PAGES GROUP CO.

Case File Number P1479

Office URL: www.oipc.ab.ca

Summary: The owner of a photography business complained that Yellow Pages Group Co. (YPG) had contravened the *Personal Information Protection Act* (PIPA) when it published an address in association with the name of her business, in its print and electronic directories, that was the address at which she resided.

The Adjudicator held that because the address had been given to YPG as the address of “the customer”, which was the business, and because there was nothing in the publications to indicate that the Complainant resided at the address, the information published by Yellow Pages Group Co. was not, as it appeared in that context, the Complainant’s personal information.

Statutes Cited: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25; *Personal Information Protection Act*, R.S.A. 2003, c. P-6.5, ss. 7(1), 14(e), 17(e), 20(j), 34, 52.

Orders Cited: AB: 97-004, P2005-001, P2006-008.

Cases cited: *University of Alberta v. Alberta (Information and Privacy Commissioner)*, 2009 ABQB 112; *Leon’s Furniture Ltd. v. Alberta (Information and Privacy Commissioner)*, 2011 ABCA 94.

I. BACKGROUND

[para 1] The Complainant operates a photography business. In mid-2006, she entered into a contract with the Yellow Pages Group Co. (YPG or “the Organization”) to list and advertise her business in the Organization’s print and electronic business and general directories.

[para 2] The Complainant provided a “screenshot” of an internet posting for 2006-2007. It shows that the contact information for the business included a telephone number and website address but not a street address.

[para 3] A second contract was entered into for 2007-2008. The Complainant provided documents titled “Detail of the Directory Advertising Contract” and “Directory Advertising Contract”. These documents have a boxed space for the “Customer Address” and “Mailing Address” These were filled in, and contained the business name, as well as an address in Calgary. A third page of the contract, which closes with the Complainant’s signature, contains a different, handwritten address (in an outlying community) in the space for “Customer Information”.

[para 4] The documents just referred to show that there was to be only a telephone number, and no street address, associated with the business name in the “Yellow Section” and the “White Pages”.

[para 5] The Complainant provided a copy of the display advertisement for her business (apparently as it appeared in the print copy of a Yellow Pages directory). It shows that a street address had been added to the display. (Based on the addition of the word “studio” preceding the same address in the following year’s display, this appears to be the address of the studio (in Calgary). The Complainant also provided a copy of a ‘yellow pages’ telephone listing in the 2008 print directory under the heading “Photographers” which did not contain any street address, and a copy of a 2007/2008 ‘white pages’ telephone listing, which also did not contain a street address.

[para 6] The present complaint relates to the 2008-2009 and subsequent contract and postings.

[para 7] The Complainant again provided copies of parts of the contract, including the pages titled “Directory Advertising Contract” (which seems to indicate what is to appear for the ‘yellow pages’) and “Details of the Directory Advertising Contract” (which shows what is to appear in the ‘white pages’). In the copy of these contract pages provided by the Complainant, the same business name and Calgary address as were listed in the previous year’s contract appear in the “Customer Address” and “Mailing Address” sections on these pages. However, in a document provided by the Organization, which is also titled “Detail of the Directory Advertising Contract” but contains details of what is to appear in the ‘Yellow Section’ rather than in the “White Pages”, the typed versions of the business name and the address (in Calgary) in these boxed spaces have been crossed out by hand in each case and replaced, in handwriting, with the business name together with

an address in an outlying community. Though given as the “Customer Address”, the Complainant apparently resided at this address, and it was thus also her home address. I will refer to this as “the Address”. This version of the page is signed at the bottom by the Complainant.

[para 8] As to what was to be listed, it appears from all three of these documents that there was to be only a telephone number, and no street address, associated with the business name in the “Yellow Section” and in the “White Pages”.

[para 9] The Complainant also provided a document titled ‘Listing Detail’ which contains an entry for ‘Online Listing Info’, which appears to indicate that the business name, telephone numbers, email and website addresses are to be published, but possibly – as indicated by an ‘X’ in the relevant row of a column headed ‘NP’ – the address (which is filled in as being the Calgary “Customer Information” address) is not to be printed. The Complainant also provided copies of a proof approval for the display advertisement (and some email correspondence concerning it), which includes the “studio” Calgary address.

[para 10] Copies of the relevant entries in the 2008-2009 ‘yellow pages’ print directories, ‘full’ and ‘light’ editions, show that the Address had been added in association with the business name for the telephone listings under the heading “photographers”. There is no indication in the listing that it is anything other than a business address. These listings also contain a “see advertisement” feature, referring to the page containing the display advertisement (which contained the studio address). The ‘white pages’ listing in the 2008/2009 directory also contains the Address in association with the business name and telephone number.

[para 11] The address listed in these print publications appears to have been derived from the portion of the advertising contract in which the Complainant (in handwriting) revised the “Customer Address” and “Mailing Address” information that had already been printed there by crossing it out and writing the name of her business and immediately thereunder setting out the Address. However, the Complainant says that, while she discussed changes to the display advertisement with YPG’s representative, and reviewed some of the alterations which he sent to her, she did not authorize a change from the preceding year’s contract such as would entail the association of the additional address with her business name in the telephone listings. As well, no such change appears to be indicated in the 2008/2009 contract documents just discussed.

[para 12] The Complainant does not provide any documentary evidence that the Address appeared in the electronic publications of her business information (although she provides a screenshot showing some other Calgary address associated with her business name, as well as a version containing an erroneous postal code only). However, in her submission she indicates that this was the case. She also says that although the error was corrected when she contacted the customer service line, it continued to reappear on the electronic postings, despite corrections, for some time, due to an automated scheduled update from a customer database. She also provided evidence that the Address reappeared

in the 2009/2010 “Canpages” print directory (though she does not explain whether and how this is associated with the YPG contract.

[para 13] The Organization provided copies of what appear to be screenshots from other online telephone directories (“allpages.com”, “phonepages.ca”, and “yelp.ca”) showing that the Address is associated with the business name in the related entries.

[para 14] The Complainant attempted to resolve these issues with YPG, and secured a discount in relation to some future charges. She remained dissatisfied, however, and filed a Complaint under the *Personal Information Protection Act*, R.S.A. 2003, c. P-6.5 (“PIPA” or the “Act”), dated November 11, 2009.

[para 15] The Commissioner authorized an investigation of this complaint. This did not resolve the matter and it was set down for a written inquiry. Both the Complainant and YPG provided initial and rebuttal submissions.

II. INFORMATION AT ISSUE

[para 16] The information at issue is the Address as it appeared in association with the name of the Complainant’s business in YPG’s publications.

III. ISSUES

The Notice of Inquiry sets out the issues in the inquiry as follows:

Did the Organization collect, use and/or disclose the Complainant’s personal information in contravention of the Act?

In the present circumstances, it appears that answers to the questions that follow will determine this issue. However, the parties may raise other factual or legal points they regard as relevant and may choose not to address those that they regard as irrelevant.

- a. Did the Organization collect, use and/or disclose “personal information” of the Complainant as that term is defined in PIPA?
- b. Did the Organization collect, use and/or disclose the information contrary to, or in compliance with, section 7(1) of PIPA (no collection, use or disclosure without either authorization or consent)?
- c. Did the Organization comply with section 34 of PIPA (reasonable security arrangements)?

IV. DISCUSSION OF ISSUES

Did the Organization collect, use and/or disclose the Complainant's personal information in contravention of the Act?

Burden of Proof

[para 17] PIPA is silent as to the allocation of the burden of proof in an inquiry into a complaint about the collection, use and disclosure of personal information. The parties made no submissions in this regard.

[para 18] The burden of proof under PIPA has been discussed in earlier orders of this office. In Order P2005-001, also a complaint under the Act, former Commissioner Work adopted the burden of proof that had previously been applied to complaints under the *Freedom of Information and Protection of Privacy Act* in Order 97-004 and in subsequent inquiries. In Order P2006-008, he said:

[para 10] 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.

[para 11] 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 12] One of the purposes of the Act is to ensure that organizations collect, use or disclose information for purposes that are reasonable. Accordingly, the threshold for the evidential burden will be low, to allow a matter about an organization's compliance with the Act to be decided in an inquiry. It therefore follows that the Act does not require that a complainant meet a stringent burden of proof as may be required in a court of law, so as to allow a matter about an organization's compliance with the Act to be decided in an inquiry.

[para 19] The approach of the Commissioner in Order P2006-008 to the burden of proof under PIPA has been approved by the Alberta Court of Queen's Bench in *University of Alberta v. Alberta (Information and Privacy Commissioner)*, 2009 ABQB 112.

[para 20] The burden in this inquiry is, accordingly, on the Complainant, to adduce some evidence that her personal information has been collected, used and/or disclosed and about the manner of such collection, use and/or disclosure so as to raise the issue of compliance with the Act. Thereafter, the Organization

bears the legal burden to prove that it had authority under the Act to so deal with the information.

a. *Did the Organization collect, use and/or disclose “personal information” of the Complainant as that term is defined in PIPA?*

[para 21] The Act defines “personal information” as “information about an identifiable individual”. In my view, the address of a person’s residence, insofar as it indicates where they are living, is personal information about them. I say this despite the decision of the Alberta Court of Appeal in *Leon’s Furniture Ltd. v. Alberta (Information and Privacy Commissioner)*, 2011 ABCA 94, cited by YPG, which held that “[i]nformation that relates to an object or property does not become information “about” an individual, just because some individual may own or use that property”. It is not inconsistent with this decision to say that in a case where the location of a property is associated with an individual in such a manner that it indicates where they reside, for example, where it is *given or designated as* a person’s home address, the information does not merely “relate to an object or property”, it relates to the individual, and it is information “about” that individual. The information is not about the person “just because” they may own the property, it is their personal information because it indicates where they live.

[para 22] In this case, however, the publication of the information at issue was not associated with the individual in the sense of indicating where she resided (even though she did in fact reside at that location). Rather, it was associated with her business name in such a way as to appear to indicate the location of her business or of some aspect of her business, for example, the location at which she received business mail. It was not possible to tell from reading the printed telephone listings or the same information associated with the business on the internet that the Complainant resided at that address. The question therefore arises whether in that particular context, the information can be said to have constituted the Complainant’s personal information.

[para 23] I acknowledge that even in the context in which it appeared, the Address might have helped someone who was looking for the Complainant’s place of residence to find it. Since the Complainant was personally named as the photographer in the display advertisement, such a person might, for instance, have noted that the address listed in the alphabetical listing was different from the one listed in the display advertisement, and might have speculated that the Complainant resided at the former address, particularly if it was an address which they knew to be (if such were the case) a residential area. Conceivably such a person could have visited the address to confirm this speculation if they were to attend at the residence at a time when the Complainant could be observed to be residing there. In considering this I also note that the Complainant has stated in her submission that she feared that the listing of the Address would have made her place of residence known to a person who she believed was stalking her at the time, which arguably gives the information a special sensitivity that supports its characterization as personal in this case where otherwise it might not be.

[para 24] At the same time, however, I note that a person who was looking for a way to contact the Complainant in person could readily have done so at her studio, especially since her name appeared in the display advertisement (as did a photograph of a photographer, positioned next to the name in such a manner as to appear to be of the Complainant herself). While I do not discount the Complainant's fears about a stalker, there were steps such a person could have taken to locate her in person as well as at her home, regardless – a point which the Complainant acknowledges in her rebuttal submission.

[para 25] Having considered all the foregoing factors, I regard the most significant, in terms of characterizing the information as personal or not, to be that the Address had been provided by the Complainant not as a home address but as an address of the "Customer" (which was the business), and that it was not listed as a home address and did not on its face appear to be a home address in YPG's directories (but, again, appeared to be the address of the business).

[para 26] Indeed, it would appear that YPG was not itself initially aware that the address was the address at which the Complainant resided, and would have had no way to know this, given that the Complainant listed her business name as "the Customer", and provided this address as the Customer Address and Mailing Address for the business. While the studio address was in fact different, it would not have been unreasonable for the YPG employee dealing with this information to suppose that the business had more than one address; indeed it is not unreasonable to conclude that the Address was in fact the address for certain aspects of the business: not only had the Complainant designated it in her contract with YPG as an address for the business, but also, as the Organization showed, it had been listed as the "Records Address" for the business in the Corporate Registry.

[para 27] Thus, despite the fact that there was a remote possibility that the information as it appeared in the directories might have helped a third person to ascertain that this was also the Complainant's home address, I do not regard this possibility as sufficiently significant to warrant treating the Address, in the context in which it was disclosed in the directories, as her personal information.

[para 28] In saying this I acknowledge that, if I understand the terms of the contract correctly, the Organization may not have abided by these contract terms in publishing the Address in association with the business name in the telephone listings or on the internet. The documents to which I have referred above possibly suggest that no street address was to appear other than the studio address in the display advertisement. However, while that may raise a question of breach of the terms of the contract, is not germane to the question of whether the Organization published the Complainant's personal information in associating the Address with her business name in the publications. PIPA does not provide remedies for contractual breaches.

[para 29] I make a similar point with respect to the Complainant's concern, raised in her complaint, that she suffered damages from YPG's error because she believes it

caused her to lose business. She says that potential clients were mistakenly led to believe that her business was conducted at the Address (which is, as noted above, located in a small community outside Calgary), rather than in Calgary, and they may not have wished to travel to do business there.

[para 30] Assuming such a loss of business could be established, in my view, any such loss would be attributable to the fact that YPG posted an additional address, beyond the posting for which the Complainant had contracted, that was *not the studio address*. The loss would be unrelated to the fact that the address that was posted happened to also be the Complainant's home address. PIPA is concerned with the protection of personal privacy - it does not protect against or compensate for a business loss due to an error made by posting an additional address as a business address.

[para 31] Before concluding this section, I note the Organization's argument that it was entitled to collect, use and disclose the Address because it was 'publicly available' information within the terms of sections 14(e), 17(e) and 20(j) of the Act. The Organization makes this argument on the basis that the Address was also associated with the business name in the Corporate Registry, as well as on a number of public online telephone directories. The aforementioned provisions apply to the publication of personal information. I would find the information in these other publications not to be personal information for the same reason that I have found it not to be so in the Organization's publications.

- b. *Did the Organization collect, use and/or disclose the information contrary to, or in compliance with, section 7(1) of PIPA (no collection, use or disclosure without either authorization or consent)?*
- c. *Did the Organization comply with section 34 of PIPA] (reasonable security arrangements)?*

[para 32] I do not need to decide questions b. and c. because they pertain to personal information only, and I have found that the address as it appeared in the various publications was not the Complainant's personal information.

V. ORDER

[para 33] I make this Order under section 52 of the Act.

[para 34] I find that YPG's use and disclosure of the Address by publishing it in its directories in association with the name of the Complainant's business was not a use and disclosure of her personal information. Therefore I find that YPG did not contravene the Act in publishing this information.

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Director of Adjudication