

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER P2012-11**

November 15, 2012

**G.M.A. PROPERTIES INC./ALLIANCE REALTY INC.**

Case File Number P1422

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

**Summary:** An individual complained that her personal information was collected, used and disclosed by her landlord, G.M.A. Properties Inc./Alliance Realty Inc. (“the Organization”) contrary to the provisions of the *Personal Information Protection Act* (“the Act”).

The Adjudicator found that the Organization had collected the Complainant’s Social Insurance Number contrary to the Act. As well, the Adjudicator found that the Organization had improperly disclosed the Complainant’s personal information by posting her name on her mailbox without the Complainant’s consent. The Adjudicator also found that the Organization was authorized to require the Complainant to consent to the collection, use, and disclosure of her personal information that was collected by the security cameras installed in the apartment building pursuant to section 7(2) of the Act but found that the Organization was required by section 13 of the Act to post notices regarding the cameras. Finally, the Adjudicator found that the Complainant did not establish that the Organization had custody or control over the Complainant’s personal information found in her mailbox and therefore section 34 of the Act did not apply.

**Statutes Cited:** **AB:** *Personal Information Protection Act*, S.A. 2003, c. P-6.5, ss. 1, 7, 8, 11, 13, 14, 16, 19, 34, and 52; *Personal Information Protection Act Regulation*, Alta. Reg. 51/2010 s 7.

**Authorities Cited:** **AB:** Orders P2011-003, and P2012-10

**Cases Cited:** *Leon's Furniture Limited v. The Information and Privacy Commissioner of Alberta* 2011 ABCA 94.

## **I. BACKGROUND**

[para 1] The Complainant complained to the Office of the Information and Privacy Commissioner (“this Office”) that her landlord, the Organization, had collected, used and disclosed her personal information contrary to the provisions of the Act. Specifically, the Complainant stated:

1. The Organization requested her social insurance number as part of her rental application form.
2. The Organization posted the Complainant’s name on her mailbox without her consent.
3. The Organization set up security cameras at various locations inside and outside of her apartment building, without properly notifying individuals as to why the Organization was recording the information and who to contact if there were any questions about the collection.

[para 2] The Complainant also states that one of her neighbours had a key that opened her mailbox.

[para 3] A portfolio officer investigated and attempted to resolve the issues between the parties but the issues were not resolved and the Complainant requested an inquiry.

[para 4] The Notice of Inquiry was sent to both the Complainant and the Organization on March 29, 2012. This Office received a copy of the Complainant’s initial submissions but no submissions were received from the Organization. However, after reviewing the submissions of the Complainant, I felt it necessary to ask several questions of the Organization regarding the installation and use of the security cameras. The Organization responded to my inquiry and I will reference the information it provided in this order.

## **II. INFORMATION AT ISSUE**

[para 5] The information at issue is the Complainant’s personal information that was collected, used, and disclosed by the Organization including her Social Insurance Number, name, and image.

## **III. ISSUES**

[para 6] The Notice of Inquiry dated March 29, 2012 states the issues for this inquiry which I summarize as follows:

1. **Did the Organization collect, use and/or disclose the information contrary to, or in compliance with, section 7(1) of the Act?**
2. **Did the Organization, as a condition of supplying a product or service, require the Complainant to consent to the collection of personal information beyond what is necessary to provide the product or service, contrary to section 7(2) of the Act?**
3. **Did the Organization collect, use or disclose the information contrary to, or in accordance with, sections 11(1), 16(1) and 19(1) of the Act?**
4. **Did the Organization collect, use or disclose the information contrary to, or in accordance with, sections 11(2), 16(2) and 19(2) of the Act?**
5. **Did the Organization collect the information contrary to, or in accordance with, section 13 of the Act? In particular, was it required to provide, and did it provide notification, before or at the time of collecting the information, in accordance with section 13 of the Act?**
6. **Did the Organization comply with section 34 of the Act?**

#### **IV. DISCUSSION OF ISSUES**

[para 7] The Complainant's main concerns are with the information mentioned in the background section of this order. Each of the Complainant's complaints arises from distinct circumstances; therefore, I will deal with each of the Complainant's three main concerns separately.

**Issue 1: Did the Organization collect, use and/or disclose the information contrary to, or in compliance with, section 7(1) of the Act?**

[para 8] Section 7(1) of the Act 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,*

*(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,*

*(c) use that information unless the individual consents to the use of that information, or*

*(d) disclose that information unless the individual consents to the disclosure of that information.*

[para 9] Therefore, subject to there being other sources of authority under the Act (which I will discuss in greater detail later in this order), the Organization ought to have received the Complainant's consent prior to collecting, using, or disclosing her information.

[para 10] The information which the Complainant complains was collected, used, or disclosed includes her Social Insurance Number, name, and her image recorded by security cameras.

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

*1(k) "personal information" means information about an identifiable individual;*

[para 12] The Complainant's Social Insurance Number, name, and image are all "information about an identifiable individual" and, therefore, are the Complainant's personal information.

***a. Social Insurance Number***

**i. Evidence regarding the collection of the Complainant's Social Insurance Number:**

[para 13] The Complainant provided me with a copy of her rental application which provides a space for the Complainant to write her Social Insurance Number, which she did. The Complainant submits that the rental application was given to the Organization. Therefore, the Complainant's personal information was collected by the Organization directly from the Complainant.

**ii. Did the Complainant consent to the collection of her Social Insurance Number within the terms of section 8 of the Act?**

[para 14] Section 8 of the Act discusses consent as follows:

*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.*

*(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).*

*(4) Subsections (2) and (3) are not to be construed so as to authorize an organization to collect, use or disclose personal information for any purpose other than the particular purposes for which the information was collected.*

*(5) Consent in writing may be given or otherwise transmitted by electronic means to an organization if the organization receiving that transmittal produces or is able at any time to produce a printed copy or image or a reproduction of the consent in paper form.*

[para 15] According to the Complainant's submissions, she did not consent orally or in writing to the collection of her Social Insurance Number. While it is true that the Complainant did provide her Social Insurance Number to the Organization in writing and seems to have done so voluntarily, this is not enough to constitute written consent under section 8(1) of the Act. The mere provision of information is consent under section 8(2) of the Act only if it is reasonable that a person would voluntarily provide it for a particular purpose.

[para 16] Although I have no evidence from the Organization as to the purpose of collecting the Complainant's personal information, I would assume that the information on the rental application was collected for the general purpose of trying to determine if

the Complainant would be a suitable tenant. However, I have no evidence as to the specific purpose for which the Organization collected the Complainant's Social Insurance Number.

[para 17] In Order P2011-003 the complainant (a realtor) complained about another realtor's conduct under the *Real Estate Act*. As part of the investigation of the complaint, a telephone conversation between the regulatory investigator and the complainant was recorded. The organization argued that the complainant's voice was recorded for the purpose of conducting an investigation, a purpose of which the complainant was aware. However, the Adjudicator found this purpose too general. The Adjudicator stated:

While the Organization's collection of the Voice Recording was also, generally speaking, for the purpose of conducting the investigation, it is necessary for the Complainant to have provided the Voice Recording for a more specific purpose. Section 8(2)(a) requires an individual to have provided his or her personal information for a "particular" purpose.

(Order P2011-003 at para 39)

[para 18] I do not believe it would be reasonable for the Complainant in this inquiry to voluntarily provide her Social Insurance Number, within the terms of section 8(2)(b) of the Act, for the purpose of determining her suitability as a tenant, because the Complainant's Social Insurance Number has no connection to her suitability as a tenant. A Social Insurance Number is an identifying number used by the government and is required for someone to legally work in Canada or to access government programs.

[para 19] Although the ability to pay rent is a reasonable qualification for being a suitable tenant, having a Social Insurance Number is not indicative that a person is actually working or has the means to pay rent. Therefore, I cannot see how collecting the Complainant's Social Insurance Number would have assisted the Organization in determining if the Complainant was a suitable tenant. As having a Social Insurance Number has no meaningful connection to the Complainant's suitability as a tenant, the collection of her Social Insurance Number would require a specific purpose. For these reasons, I find that section 8(2) of the Act is not applicable.

[para 20] Section 8(3) of the Act allows an organization to collect information from an individual for a particular purpose if the organization provides the individual with proper notice and an opportunity to decline. I have no evidence that the Complainant was given notice of the purpose of the collection of her Social Insurance Number; therefore, I find that section 8(3) of the Act is not applicable.

[para 21] Based on the foregoing, I find that the Organization collected the Complainant's Social Insurance Number without consent within the terms of section 8 of the Act.

**iii. Did the Organization have the authority to collect the Complainant's Social Insurance Number pursuant to section 14 of the Act?**

[para 22] Pursuant to section 14 of the Act, an organization is permitted to collect information without consent in certain circumstances. Section 14 of the Act 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 23] None of the circumstances in section 14 of the Act apply to this matter. As a result, I find that the Organization did not have the authority to collect the Complainant's Social Insurance Number under the authority of section 14 of the Act.

***b. Name on mailbox***

**i. Evidence regarding the disclosure of the Complainant's personal information:**

[para 24] According to the Complainant, when she moved into her apartment building she noticed that her name was posted on her mailbox, which is located in the lobby of the building. She removed it and told the resident manager that she did not want her name posted on her mailbox. The Complainant submits that the resident manager informed her that Canada Post required her name to be posted. Though it is not clear, I understand the Complainant's evidence to be that she then contacted Canada Post and was told that she was not required to have her name on her mailbox and so the Complainant removed her name once more. However, subsequently, the Complainant's name was put back on the mailbox.

[para 25] The facts that the Complainant have provided to me are not contradicted and I accept her evidence. On the basis of the information before me, it is clear that the Organization did disclose her name to persons who might be present in the lobby of the apartment building.

**ii. Did the Complainant consent to her name being disclosed by the Organization within the terms of section 8 of the Act?**

[para 26] Based on the information I have, the Complainant clearly did not consent to the Organization disclosing her personal information by posting her name on her mailbox within the terms of section 8 of the Act (cited above).

**iii. Did the Organization have the authority to disclose the Complainant's personal information pursuant to section 20 of the Act?**

[para 27] Section 20 of the Act sets out circumstances in which an organization may disclose personal information without consent. I have reviewed section 20 of the Act and the only circumstance that may be applicable in this inquiry states:

*20 An organization may disclose personal information about an individual without the consent of the individual but only if one or more of the following are applicable:*

...

*(j) the information is publicly available;*

[para 28] I do not believe that section 20(j) of the Act is actually applicable. Section 7 of the *Personal Information Protection Act Regulation* (“the Regulation”) defines “information that is publicly available” as that term is used in section 20(j) as follows:

*7 For the purposes of sections 14(e), 17(e) and 20(j) of the Act, personal information does not come within the meaning of “the information is publicly available” except in the following circumstances:*

*(a) the personal information is contained in a telephone directory but only if*

*(i) the information consists of the name, address and telephone number of a subscriber to the directory,*

*(ii) the directory is available to the public, and*

*(iii) the subscriber can refuse to have the personal information appear in the directory;*

*(b) the personal information, including, but not limited to, the name, title, address, telephone number and e-mail address of an individual, is contained in a professional or business directory, listing or notice but only if*

*(i) the directory, listing or notice is available to the public, and*

*(ii) the collection, use or disclosure of the personal information relates directly to the purpose for which the information appears in the directory, listing or notice;*

*(c) the personal information is contained in a registry that is*

*(i) a Government registry, or*

*(ii) a non-governmental registry,*

*but only if the collection, use or disclosure of the information relates directly to the purpose for which the information appears in the registry and that purpose is an established purpose of the registry;*

*(d) the personal information is contained in a record of a quasi-judicial body but only if*

*(i) the record is available to the public, and*

*(ii) the collection, use or disclosure of the information relates directly to the purpose for which the information appears in the record;*

*(e) the personal information is contained in a publication, including, but not limited to, a magazine, book or newspaper, whether in printed or electronic form, but only if*

*(i) the publication is available to the public, and*

*(ii) it is reasonable to assume that the individual that the information is about provided that information;*

*(f) personal information that is under the control of an organization and that has been collected from outside of Alberta, that if collected from within Alberta would have been collected under the authority of clause (a), (b), (c), (d) or (e), or any 2 or more of those clauses.*

[para 29] While the Complainant's name (associated with her place of residence) may be available publicly as defined by section 7 of the Regulation, I have no evidence to indicate this is the case. Therefore, I cannot find that this section applies so as to authorize the Organization to post the Complainant's name on her mailbox.

### ***c. Security Cameras***

#### **i. Evidence regarding the collection, use, and disclosure of the Complainant's personal information collected by the security cameras:**

[para 30] In her submissions, the Complainant stated that security cameras were mounted inside the front and back entrance doors to the apartment building and that for a short time there were letters posted at those entrances stating that the cameras were installed for the purposes of "safety/crime".

[para 31] According to the Complainant, there was also a camera installed on the exterior of the apartment building. The Complainant made no submissions about any notices regarding the exterior camera.

[para 32] The Organization states that there were cameras installed at the front and side entrances of the building and two facing the back parking lot. It also states that each tenant was advised by letter two weeks prior to the cameras being installed, that this would happen. The reason given was to help deal with security issues such as break-ins of mailboxes and storage rooms, and vandalism of vehicles in the parking lot. According to the Organization, notices were also posted for a couple of months after the cameras were installed. The Complainant disagreed with the Organization's responses to my questions with regard to the type and length of notice and that there were any security

issues at all with the building. Given that the Organization would be aware of all vandalism issues in its building, on a balance of probabilities I find that Organization's evidence on these points is more reliable and accept that there were security issues in the building as it stated. As well, I also accept the Organization's evidence regarding the notices given to tenants and posted in the building.

[para 33] The Complainant submits that her personal information was used/disclosed by the Organization. Specifically, the Complainant submits that the resident manager viewed the footage from the cameras on a daily basis regardless of whether there was a security issue. In her submissions, the Complainant gave two different accounts of a conversation which she submits as evidence that the resident manager viewed the tapes regularly regardless of security issues. In one account she claims that the resident manager stated that she watched security footage of the Complainant trying her mailbox key in mailboxes other than her own. In another account given by the Complainant, she simply states that she wondered how the resident manager knew that she had tried her mailbox key in other mailboxes.

[para 34] In response to my questions, the Organization stated that the information recorded by the cameras was used to identify vandals and curb vandalism. It stated that only the resident manager and the police were given access to the recordings, and that the recordings were viewed to, "...help deal with vandals etc." The recordings are kept on a hard drive which is overwritten every several weeks (when the hard drive is full).

[para 35] Due to the internally inconsistent evidence given by the Complainant, I cannot find that the Complainant has met her evidential burden to establish that the Organization (through its resident manager) used/disclosed her personal information by viewing the security footage. However, based on the evidence before me, the Complainant has established that her personal information was collected by the Organization using the security cameras.

**ii. Did the Organization have the Complainant's consent to collect her personal information using security cameras within the terms of section 8 of the Act?**

[para 36] From the information provided to me, I find that the Complainant did not consent, orally or in writing within the terms of section 8 of the Act, to the Organization's collection of her personal information (in this instance, her image) by way of the security cameras.

**iii. Did the Organization give the Complainant proper notice of the collection of her personal information using the security cameras?**

[para 37] Section 8(3) of the Act allows an organization to collect personal information from an individual if it gives proper notice of the purpose and an opportunity to decline. Section 8(3) of the Act 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 38] According to the Complainant, for a time there were letters posted at the interior entrances stating that the cameras were installed for the purposes of “safety/crime”. The Organization confirmed that notices were posted for a short time after the cameras were installed. As well, the Organization states that letters were sent to the residents informing them that security cameras would be installed.

[para 39] Based on the information I have regarding the notice, I cannot find that the Organization complied with section 8(3) of the Act, because it did not give the Complainant the opportunity to decline or object to her personal information being collected within the terms of section 8(3)(a)(ii) of the Act.

[para 40] I find that the Organization collected the Complainant’s personal information which was recorded by the security camera without her consent within the terms of section 8.

**iv. Did the Organization have the authority to collect the Complainant’s personal information under section 14 of the Act?**

[para 41] Sections 14 of the Act lists circumstances in which an organization is permitted to collect an individual’s personal information without consent. The only circumstance which could be applicable in this inquiry is section 14(a) which 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;*

...

[para 42] As the Complainant was a resident of the building, the Organization ought to have been able to obtain her consent in a timely manner. Further, I do not believe that tenants in these circumstances would not reasonably be expected to withhold consent, as the balancing of security and privacy in such circumstances would be a matter of personal preference about which reasonable persons might make different choices. As a result, I cannot find that the Organization was authorized to collect the Complainant's information without consent pursuant to section 14 of the Act.

**Issue 2: Did the Organization, as a condition of supplying a product or service, require the Complainant to consent to the collection of personal information beyond what is necessary to provide the product or service, contrary to section 7(2) of the Act?**

[para 43] 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 44] Section 7(2) is a prohibition against organizations' requiring consent except where the collection, use, or disclosure of information is necessary for providing a product or service. In my view, this provision may also be cited in support of an organization's collection, use and disclosure of the required information in that, where the information is given over (even if reluctantly) or its use or disclosure is agreed to (again, even if reluctantly) as long as the collection, use, or disclosure is necessary to provide the product or service, it is permissible. In Order P2012-10, the Adjudicator stated:

...I note that, in my view, it is implicit from section 7(2) that if an organization meets the requirements for requiring information to be given over that are set out in that section, the organization will be permitted to collect, use and disclose the information to the extent that doing these things is necessary for providing the product or service. It might be useful to have additional words in the provision that explicitly say this, given the potential for confusion where reluctant (rather than voluntary) consent may be involved.

(Order P2012-10 at para 13)

[para 45] I note that the discussion just quoted is premised on the complainant's having provided the information for a particular purpose when required to do so. It is important to clarify that simply meeting the requirement that the information be necessary is not

enough to make the provision operate as an exception to the prohibition against collection, use and disclosure in the absence of consent. Even if an organization actually needs information to provide a product or service, it may not collect, use, or disclose the information unless the individual whose information it is has been engaged in the transaction and has, at a minimum, reluctantly given over the information, or reluctantly agreed to its use or disclosure. Thus, for example, an organization that has an individual's information from another source may not use it for the purpose of providing a product or service, even if it is necessary for it to do so, without engaging the individual on the subject and obtaining agreement. Similarly, an organization may not surreptitiously collect the information and then use or disclose it in such circumstances. If it cannot engage the individual in the transaction and obtain the information with their (albeit reluctant) consent, the organization's only option is to refuse to provide the product or service.

[para 46] The concept of "reluctant consent" was discussed by the Court of Appeal in the case of *Leon's Furniture Limited v. The Information and Privacy Commissioner of Alberta*, wherein Justice Slatter discussed the meaning of section 7(2) of the Act and stated:

This provision imposes a prohibition on unnecessary contractual terms requiring the disclosure of personal information, but it does provide for what might be called "reluctant consent". The individual does not really want to provide the personal information, but does want to take advantage of the products or services that are available if the information is provided. The *Act* allows an organization to refuse to contract except on the basis that personal information will be provided, so long as that condition of the contract is reasonably necessary...

*(Leon's Furniture Limited v. The Information and Privacy Commissioner of Alberta 2011 ABCA 94 at para 44)*

[para 47] It is not clear from the language of section 7(2) whether the "consent" referred to therein is consent within the terms of section 8 of the Act. However, section 8 appears to contemplate consent to which the giver is agreeable – in contrast to "reluctant consent" which is given because the information is required by an organization before a product or service will be provided, but which is given only for this reason and contrary to the wishes of the giver otherwise. The idea of "requiring consent" as set out in section 7(2) seems to include, and indeed may be largely directed at, this type of "reluctant consent". In my view, section 7(2) permits consent within the terms of section 7(1) to be "reluctant consent" - it need not be the type of voluntary consent contemplated in section 8. As long as the information is necessary to provide the product or service, such consent will meet the requirement for consent under section 7(1) of the Act nevertheless.

**a. Social Insurance Number**

[para 48] The Complainant did not provide me with any evidence or argument that the Organization required her to consent to the collection, use, or disclosure of her Social Insurance Number or name as a condition of supplying her with a service. It is not clear what would have happened had she declined to provide the Social Insurance Number as

part of her rental application. As a result, the Complainant has not met her evidential burden in this regard and so I cannot find that the Organization contravened section 7(2) of the Act regarding her Social Insurance Number or name.

[para 49] However, given that the Organization had no consent or authority to collect the Complainant's Social Insurance Number, I find that the Organization collected this information in contravention of the Act.

***b. Name on mailbox***

[para 50] For the reasons that follow, I do not believe that section 7(2) of the Act is engaged with regard to the posting of the Complainant's name.

[para 51] First, the *prohibition against* requiring consent is not engaged because the Organization did not require consent. Arguably, the Organization was providing the service of facilitating mail delivery in providing the mailbox. However, it did not require the Complainant to consent to the placing of her name on the mailbox as a condition of providing a product or service. While there appears to have been some disagreement as to whether the name was required (by Canada Post), the Organization did not suggest that it would not provide the mailbox unless the name was posted and thereby disclosed. Therefore, the Organization cannot be said to have violated the prohibition in section 7(2).

[para 52] It does not follow from this, however, that the Organization can be said to have been in compliance with section 7(2) in the sense that it derived authority from this provision to post the name. I reach this conclusion for two reasons.

[para 53] First, as discussed above, the exception to the prohibition against collection, use, and disclosure provided by section 7(2) (where necessary for providing the product or service) comes into play only when the person whose information it is has been engaged in the transaction and provides consent (whether agreeably or reluctantly). In this case, since the Complainant was not engaged at all, but rather her information was posted without consulting with her (and a second time contrary to her wishes), the condition of "obtaining consent" was not met.

[para 54] Second, while there is some conflicting evidence of Canada Post's requirements, there is no evidence before me – nor even any suggestion – that posting the name was necessary in order for the Organization to provide *its* service of facilitating mail delivery.

[para 55] The result is that section 7(2) does not govern the question. However, as the Organization did use and disclose the Complainant's name, without her consent, and it has not pointed to any other source of authority in the Act for doing so, I conclude that it contravened the Act in posting her name on the mailbox.

*c. Security Cameras*

[para 56] In her submissions, the Complainant indicates that she was uncomfortable with the security cameras, particularly the one on the exterior of the building, to the point that she did not park her vehicle in the parking lot where she would be under surveillance. However, as she continued to live in the building after the cameras were installed, she necessarily walked past one of the interior cameras in order to access her apartment.

[para 57] Although the Complainant made no direct argument regarding the Organization 'requiring her to consent' to the collection, use, or disclosure of her personal information by the security cameras, the fact she must walk past one of the interior cameras in order to access her apartment, and continued to do so despite the presence of the camera, means that she has consented to the collection of her personal information, albeit reluctantly, in order to continue receiving the service (accommodation) provided by the Organization.

[para 58] As discussed above, consent under section 7(2) of the Act can be "reluctant consent". It is consent of this type that is involved where a complainant provides it – as in the present case – by reluctantly placing themselves in the range of a camera in order to obtain the product or service (in this case the secure residential accommodation being provided by the Organization). In saying this, I acknowledge that the landlord/tenant circumstance does not fit comfortably into the language of section 7(2). This is because if the information is indeed necessary for provision of secure accommodation and if a tenant refuses consent, their only recourse is to move out of the building. Nonetheless, unless the provision is understood to apply to the circumstance, the landlord may be precluded by the Act from taking steps to ensure the safety of the tenants and the security of the residential property. In my view it is reasonable to infer that the language of the statute was also intended to apply to such circumstances as much as to any other product or service an organization might provide.

[para 59] Therefore, if it is reasonably necessary to have security cameras in the entrance areas of the apartment building in order for the Organization to provide accommodations to its tenants, it can require the Complainant to provide her personal information to the security cameras as a condition of her being a tenant in the apartment building, and it is permitted to collect this personal information.

[para 60] Turning to whether the cameras are necessary in this case, in response to my questions, the Organization stated that the cameras were installed for security reasons. It said that prior to installing the cameras, tenants were having their mailboxes and storage rooms broken into weekly. As well, laundry rooms were being broken into and an exterior postal box was completely destroyed. According to the Organization, the police recommended that it install security cameras. The cameras at the entrances were installed in 2008 and the ones facing the parking lot were installed in 2010. Since the cameras were installed, the Organization says there has been only one incident in the parking lot when a vehicle was stolen, and on one occasion a stolen vehicle was dropped off.

[para 61] Based on this evidence, I may conclude that the Organization is providing more than mere physical accommodation to the Complainant and its other tenants, it is providing a reasonably secure accommodation. To provide such secure accommodation, it was necessary for it to install security cameras at the entrances and parking area of the building. Thus, I find that the conditions under section 7(2) are met such that the Organization is authorized to install the security cameras, to require the tenants to consent to collection of their information insofar as they are necessarily recorded by the cameras, and to collect the information of its tenants by way of the cameras.

[para 62] The Complainant raised a separate issue regarding the use/disclosure of the information that was recorded using the cameras. Specifically, the Complainant submits that the resident manager viewed the footage from the cameras on a daily basis, regardless of whether there was a security issue. However, as I noted above, the Complainant did not meet her evidential burden to establish that the Organization used/disclosed her personal information by viewing the security footage when there was not a security issue reported. She has not established on a balance of probabilities that the resident manager viewed footage and that this is how she knew that the Complainant tried her key in other mailboxes.

[para 63] Even though I do not find that the Complainant has met her evidential burden regarding the use/disclosure of her personal information, I will address below the issue of how the organization ought to be dealing with (using/disclosing) the personal information that it collects.

**Issue 3: Did the Organization collect, use or disclose the information contrary to, or in accordance with, sections 11(1), 16(1) and 19(1) of the Act?**

**Issue 4: Did the Organization collect, use or disclose the information contrary to, or in accordance with, sections 11(2), 16(2) and 19(2) of the Act?**

[para 64] 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 65] Section 16 of the Act states:

*16(1) An organization may use personal information only for purposes that are reasonable.*

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

[para 66] Section 19 of the Act states:

*19(1) An organization may disclose personal information only for purposes that are reasonable.*

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

**a. Social Insurance Number**

[para 67] I have found that the Organization did not have the Complainant's consent or the authority to collect the Complainant's Social Insurance Number and therefore that it contravened the Act in collecting that information. As a result, there is no need for me to consider if the Organization complied with or contravened section 11 of the Act when it collected the Complainant's Social Insurance Number.

[para 68] Further, the Complainant has provided me with no evidence that the Organization used or disclosed her Social Insurance Number; therefore she has not met her evidential burden in this regard and I cannot find that the Organization contravened sections 16 or 19 of the Act with regard to the Complainant's Social Insurance Number.

**b. Name on mailbox**

[para 69] I have found that the Complainant did not consent to the Organization posting her name on her mailbox. I further found that the Organization did not have the authority under any of the other provisions of the Act to use or disclose this information and that it contravened the Act in using/disclosing this personal information. As a result I do not need to consider if the Organization complied with sections 16 or 19 of the Act and will not make any finding in this regard.

**c. Security Cameras**

[para 70] I have found that the Organization was authorized by section 7(2) of the Act to require the Complainant to consent to the collection of her personal information by the security camera pursuant to section 7(2) of the Act because it was necessary for providing the service of a secure accommodation. Given that it was necessary for the Organization to collect the information, I do not think I need to consider if the collection was reasonable pursuant to section 11 of the Act. Being necessary is a higher standard than reasonableness.

[para 71] As well, the Complainant did not meet her evidential burden regarding the use and disclosure of her personal information collected by the security cameras.

Therefore, I will not be making any further findings regarding the collection, use, and disclosure of this information pursuant to sections 11, 16, and 19 of the Act.

**Issue 5: Did the Organization collect the information contrary to, or in accordance with, section 13 of the Act? In particular, was it required to provide, and did it provide notification, before or at the time of collecting the information, in accordance with section 13 of the Act?**

[para 72] 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 73] As I noted above, in her submissions, the Complainant stated that security cameras were mounted inside the front and back entrance doors to the apartment building and there was also a camera installed on the exterior of the apartment building sometime after the interior cameras were installed.

[para 74] According to the Complainant and the Organization, for some time there were notices posted at the interior entrances stating that the cameras were installed for the purposes of "safety/crime". The Complainant submits that after the notices were taken down, no notices were posted as to who to contact with questions about the cameras.

[para 75] Based on the information before me, I cannot find that the notices that were posted were adequate to satisfy the requirements of section 13 of the Act. Even if I were able to find that the original notices that were posted were adequate to satisfy the requirements of section 13 of the Act, the notices have been taken down.

[para 76] In Order P2006-008, the former Commissioner addressed the issue of proper notification of the existence of security cameras. Although the former Commissioner was investigating security cameras in a public change room, which is much more invasive into an individual's personal privacy, I think that the notification he ordered is appropriate in this matter. The former Commissioner stated:

I order the Organization to replace its current signage with signs that explain the purpose for the collection of personal information and the circumstances in which that personal information will be disclosed. Additionally, the signs will identify the names of staff who, on behalf of the Organization, can be contacted to answer questions regarding the collection of personal information.

(Order P2006-008 at para 111)

[para 77] I will order the Organization to do the same.

**Issue 6: Did the Organization comply with section 34 of the Act?**

[para 78] Section 34 of the Act states:

*34 An organization must protect personal information that is in its custody or under its control by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure, copying, modification, disposal or destruction.*

[para 79] The Complainant's submissions touched on the issue of security arrangements for personal information in two ways. The first was with regard to the contents of her mailbox (the mail she received). Although her submissions on this point were somewhat unclear, it appears as though the Complainant believes that her mailbox was not re-keyed before she moved into the building. As well, according to the Complainant, one of her neighbours could gain access to her mailbox using his mailbox key.

[para 80] In order for this section to apply, the Complainant must establish that the Organization had custody or control over her personal information – in this case, the personal information found in her mail that was stored in her mailbox. I have no evidence before me that indicates that the Organization had custody or control over the contents of the Complainant's mailbox; therefore, I cannot find that the Organization contravened section 34 of the Act.

[para 81] The second security issue raised by the Complainant was with regard to the security tapes. The Complainant submits that the security tapes were regularly viewed no

matter if a security issue has been raised or not. I have already found that the Complainant did not meet her evidential burden to prove that the Organization regularly viewed the security footage without cause. I specifically asked the Organization how the footage was being used and to whom it was being disclosed. The Organization advised that the footage was being used to identify vandals and curb vandalism and that the recordings were only viewed by the resident manager and the Edmonton Police Service. Further, it stated that recordings were only viewed when vandalism occurred.

[para 82] Although the Complainant has not met her burden and so I cannot make a finding regarding the Organization's security arrangements, I will warn the Organization that it ought to be cautious when using/disclosing the personal information it collects by way of the security cameras to limit the use/disclosure to times when it is necessary for it to provide secure accommodations to its tenants. More specifically, it should adhere to its current policy closely and only view the security footage when a security issue or complaint has arisen, and it should not be viewing the footage on a routine basis. As well, the Organization ought to ensure that the security footage is stored in a secure location with access limited to those who are responsible for viewing it in appropriate circumstances.

## **V. ORDER**

[para 83] I make this Order under section 52 of the Act.

[para 84] I find that the Organization collected the Complainant's Social Insurance Number contrary to sections 7 and 11 of the Act and order the Organization to black out or otherwise destroy all copies the Complainant's Social Insurance Number found on the Complainant's rental application.

[para 85] I find that the Organization disclosed the Complainant's personal information in contravention of the Act when it posted her name on her mailbox and order the Organization to remove the Complainant's name from her mailbox if it has not already done so.

[para 86] I find that the Organization is authorized to collect the Complainant's personal information using security cameras posted at the entrances and exterior of the apartment building under section 7(2) of the Act.

[para 87] I find that the Organization did not comply with the notification requirements set out in section 13(1) of the Act.

[para 88] I order the Organization to replace its current signage with signs that explain the purpose for the collection of personal information and the circumstances in which that personal information will be disclosed. Additionally, the signs must identify the names of staff who, on behalf of the Organization, can be contacted to answer questions regarding the collection of personal information.

[para 89] I find that the Organization was not in the custody or control of the Complainant's personal information found in her mailbox and has not contravened section 34 of the Act.

[para 90] I further order the Organization to notify me and the Complainant, in writing, within 50 days of receiving a copy of this Order that it has complied with the Order.

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Keri H. Ridley  
Adjudicator