

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER P2017-06**

August 10, 2017

**ASCOT INVESTMENTS INC.  
O/A ASCOT GARDEN**

Case File Number 001556

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

**Summary:** The Complainant complained that her personal information was disclosed to tenants, Social Services, the Canada Revenue Agency, and Alberta Health Services by employees of her landlord, Ascot Garden (the Organization) contrary to the *Personal Information Protection Act* (the Act or PIPA).

The Adjudicator found that the Organization's employees (acting in their employment capacity) disclosed the Complainant's personal information to other tenants and the police. Further, the Adjudicator found that the Organization provided no justification for doing so. As a result, the Adjudicator could find no authority under the Act to disclose the Complainant's personal information.

**Statutes Cited: AB:** *Personal Information Protection Act*, S.A. 2003, c. P-6.5 ss. 1, 7, 8, 19, 20, and 52.

**Authorities Cited: AB:** Orders P2008-007, P2009-013, P2009-014, P2017-01

**I. BACKGROUND**

[para 1] On August 14, 2015, the Complainant submitted a complaint to the Office of the Information and Privacy Commissioner (this Office) that stated that contrary to the *Personal Information Protection Act* (the Act or PIPA) employees of her landlord (the

Organization) disclosed her personal information to other tenants as well as to Social Services, the Canada Revenue Agency (CRA), and Alberta Health Services (AHS). The information the Complainant alleges was disclosed was information about her mental health, medications, and living situation.

[para 2] Mediation was authorized but did not resolve the issues between the parties and on March 22, 2016, the Complainant requested an inquiry. I received submissions from both the Complainant and the Organization.

## **II. RECORDS AT ISSUE:**

[para 3] As this is a complaint, there are no records directly at issue.

## **III. ISSUES**

[para 4] The Notice of Inquiry dated January 5, 2017 states the issues in this inquiry as follows:

1. Did the Organization disclose "personal information" of the Complainant as that term is defined in PIPA?
2. If the answer to question 1 is yes, did the Organization disclose the information contrary to, or in compliance with, section 7(1) of PIPA (no disclosure without either authorization or consent)? In particular,
  - a. Did the Organization have the authority to disclose the information without consent, as permitted by section 20 of PIPA?
  - b. If the Organization did not have the authority to disclose the information without consent, did the Organization obtain the Complainant's consent in accordance with section 8 of the Act before disclosing the information? In particular,
    - i. Did the individual consent in writing or orally, or
    - ii. Is the individual deemed to have consented by virtue of the conditions in section 8(2)(a) and (b) having been met? or
    - iii. Is the collection, use or disclosure permitted by virtue of the conditions in section 8(3)(a), (b) and (c) having been met?
3. Did the Organization disclose the information contrary to, or in accordance with, sections 19(1) and (2) of PIPA (disclosure for purposes that are reasonable and to the extent reasonable)?

[para 5] The Complainant brought up many issues, beyond the alleged privacy breach, that she has with the Organization, including issues with the state of her unit and the Organization's failing to fix inadequacies in her unit and raising her rent. These issues are not related to whether the Organization disclosed the Complainant's personal information or not. As a result, I will not address them in this Order.

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

##### **1. Did the Organization disclose "personal information" of the Complainant as that term is defined in PIPA?**

[para 6] Personal Information is defined in section 1(1)(k) of the Act as follows:

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

[para 7] As I stated above, the Complainant alleges that information about her health and medication was disclosed to other tenants by employees of her landlord. As well, she states that the same employees disclosed information about her to Social Services, the CRA, and AHS. The information that the Complainant alleges was disclosed (about her health, medications, and living arrangements) would fit within the definition of personal information. However, the Organization denies that the Complainant's personal information was disclosed except that in one instance, one of the employees called the police and informed them that there was a person in her office (the Complainant) with "mental issues". Therefore, I must first determine if the Organization, through its employees, did in fact disclose personal information to third parties as alleged by the Complainant.

[para 8] As the Complainant is alleging that the Organization disclosed her personal information in contravention of the Act, the initial or evidential burden of proof rests with her. She must adduce some evidence regarding what personal information was disclosed, and in what manner. If the Complainant meets this burden, it then shifts to the Organization to prove that the disclosure was done in accordance with the Act (Order P2009-013 and P2009-014 at para 45).

[para 9] With respect to the allegations regarding the disclosure of information to other tenants, the Complainant states that an employee of the Organization was in her unit while an inspection for repairs was occurring and at that time, the employee picked up a bottle of medication prescribed to the Complainant and commented on the addictive nature of the medication. If I understand the Complainant's submissions correctly, the Complainant believes that this is when the Organization became aware of the medication she was taking. The Organization argues that it was unaware of the medications the Complainant was taking.

[para 10] The Complainant provided several statements signed by other tenants in which they state that they were told by employees of the Organization things such as:

From one tenant:

[an employee of the Organization] has informed numerous persons that [the Complainant] is on medications...She has told [the Complainant's] neighbours that she has mental problem[s], on other occasions [the Organization's employee] told neighbors that [the Complainant] called social services on them...

From another tenant:

[We] were told to stay away from [the Complainant] and have no contact with her don't even (*sic*) look her in the eye do (*sic*) to the fact she is on narcotics...

From another tenant:

I was told by [the Organization's employee] that [the Complainant] was a pill popping crazy head case and not to talk to her...

[para 11] In a recent Order issued by this Office (P2017-01), the Adjudicator found that a complainant's co-workers were acting in their personal capacities when they disclosed the complainant's personal information to her mother. However, here there is no indication from the Organization that the employee(s) who the Complainant alleges disclosed her personal information did so outside their employment or in their personal capacities. Therefore, at all times relevant to this inquiry, I find that the employees were acting in their professional capacities such that their disclosures were those of the Organization.

[para 12] The Organization states that these statements are a fabrication and points out that some of the authors of the statement "skipped out" on rent and/or are being influenced by the Complainant to say things that are untrue. It denies that any of these things were said to the tenants. In response to these allegations, the Complainant provided printouts of conversations apparently between herself and the authors of the statements wherein the authors verify that they made the statements and were not coerced into doing so.

[para 13] Some of the statements were handwritten, and the handwriting differed from statement to statement and was also different than the Complainant's own handwriting. The statements that were typed were signed, and all the signatures differed. The language used in the statements was also unique in each statement. Based on this, and despite the fact that the statements were not in a sworn affidavit, I have no doubt that the Complainant did not fabricate the statements. I also do not understand what bearing the fact that the authors of the statements were not paying their rent would have on the authenticity of the statements or the truth of their contents. Therefore, I find that the Organization, through its employees, disclosed to other tenants information about the Complainant's health, such as the fact that she took medication. In addition, I find that the Organization, through its employees, disclosed to other tenants and to the police their opinion that the Complainant had "mental issues". I say that this was the opinion of these

employees because I do not have any information before me that would indicate that the Complainant actually did suffer from a mental illness. Rather, the information I have indicates that she had many long-standing issues with the Organization's employees such that they may have formed the opinion that she had "mental issues". However, a third party's opinion about an individual is still that individual's personal information (see Order P2008-007 at para 18).

[para 14] Regarding disclosures to Social Services, the CRA, and AHS, I do not have sufficient evidence to prove that the Organization disclosed the Complainant's personal information. The Complainant provided me with a health inspection report written by an employee of AHS which discusses the Complainant's health; however, it is not clear who provided this information to AHS. Further, the Complainant states that information about her living arrangements was provided to the CRA and Social Services, but I did not find any evidence that it was the Organization that provided this information to these agencies. The Complainant references audio and video recordings as proof, but did not provide these to me. It appears that they may have been provided to the Senior Information and Privacy Manager who mediated this matter; however, this information was not brought forward to inquiry, and this is indicated in the Notice of Inquiry. In addition, I wrote to the Complainant to advise her that she had one last chance to put evidence before me. The letter was sent express post but was never picked up. Therefore, as I do not have sufficient evidence, I cannot find that the Organization disclosed the Complainant's personal information to Social Services, the CRA, or AHS. As a result, for the remainder of this Order, the information I will be examining is the Complainant's personal information that was disclosed to other tenants and the police by the Organization.

**2. If the answer to question 1 is yes, did the Organization disclose the information contrary to, or in compliance with, section 7(1) of PIPA (no disclosure without either authorization or consent)?**

[para 15] The portion of section 7(1) of the Act that are relevant in this inquiry state:

*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.*

**a. Did the Organization have the authority to disclose the information without consent, as permitted by section 20 of PIPA?**

[para 16] Section 20 of the Act set out instances where an organization is permitted to disclose an individual's personal information without consent. Section 20 of the Act 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:

(a) a reasonable person would consider that the disclosure 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 disclosure of the information is authorized or required by

- (i) a statute of Alberta or of Canada,
- (ii) a regulation of Alberta or a regulation of Canada,
- (iii) a bylaw of a local government body, or
- (iv) a legislative instrument of a professional regulatory organization;

(b.1) the disclosure of the information is for a purpose for which the information was collected pursuant to a form that is approved or otherwise provided for under a statute of Alberta or a regulation of Alberta;

(c) the disclosure of the information is to a public body and that public body is authorized or required by an enactment of Alberta or Canada to collect the information from the organization;

(c.1) the disclosure of the information is necessary to comply with a collective agreement that is binding on the organization under section 128 of the Labour Relations Code;

(c.2) the disclosure of the information is necessary to comply with an audit or inspection of or by the organization where the audit or inspection is authorized or required by

- (i) a statute of Alberta or of Canada, or
- (ii) a regulation of Alberta or a regulation of Canada;

(c.3) the disclosure of the information is

- (i) to an organization conducting an audit, other than an audit referred to in clause (c.2), by the organization being audited, or
- (ii) by an organization conducting an audit, other than an audit referred to in clause (c.2), to the organization being audited

for a purpose relating to the audit and it is not practicable to disclose non-identifying information for the purposes of the audit;

*(d) the disclosure of the information is in accordance with a provision of a treaty that*

- (i) authorizes or requires its disclosure, and*
- (ii) is made under an enactment of Alberta or Canada;*

*(e) the disclosure of the information is for the purpose of complying with a subpoena, warrant or order issued or made by a court, person or body having jurisdiction to compel the production of information or with a rule of court that relates to the production of information;*

*(f) the disclosure of the information is to a public body or a law enforcement agency in Canada to assist in an investigation*

- (i) undertaken with a view to a law enforcement proceeding, or*
- (ii) from which a law enforcement proceeding is likely to result;*

*(g) the disclosure of the information is necessary to respond to an emergency that threatens the life, health or security of an individual or the public;*

*(h) the disclosure of the information is for the purposes of contacting the next of kin or a friend of an injured, ill or deceased individual;*

*(i) the disclosure 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 information is publicly available as prescribed or otherwise determined by the regulations;*

*(k) the disclosure of the information is to the surviving spouse or adult interdependent partner or to a relative of a deceased individual if, in the opinion of the organization, the disclosure is reasonable;*

*(l) the disclosure 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;*

*(m) the disclosure of the information is reasonable for the purposes of an investigation or a legal proceeding;*

*(n) the disclosure of the information is for the purposes of protecting against, or for the prevention, detection or suppression of, fraud, and the information is disclosed to or by*

*(i) an organization that is permitted or otherwise empowered or recognized to carry out any of those purposes under*

*(A) a statute of Alberta or of Canada or of another province of Canada,*

*(B) a regulation of Alberta, a regulation of Canada or similar subordinate legislation of another province of Canada that, if enacted in Alberta, would constitute a regulation of Alberta, or*

*(C) an order made by a Minister under a statute or regulation referred to in paragraph (A) or (B),*

*(ii) Investigative Services, a division of the Insurance Bureau of Canada, or*

*(iii) the Canadian Bankers Association, Bank Crime Prevention and Investigation Office;*

*(o) the organization is a credit reporting organization and is permitted to disclose the information under Part 5 of the Fair Trading Act;*

*(p) the organization disclosing the information is an archival institution and the disclosure of the information is reasonable for archival purposes or research;*

*(q) the disclosure 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;*

*(r) the disclosure is in accordance with section 20.1, 21 or 22.*

[para 17] As I have found that the Complainant met her burden of proving that her personal information was disclosed to other tenants and the police, the burden to prove that the disclosure was authorized by the Act falls to the Organization. The Organization did not argue that any of the subsections quoted above applied to the facts in this inquiry. The Organization's submission focused on its argument that it did not disclose the Complainant's personal information. I do not see that any of the circumstances listed in section 20 of the Act apply to the facts in this inquiry. The Organization provided no justification for disclosing this information and I, therefore, cannot find that its burden of proof has been met. As a result, I find that the Organization did not have the authority to disclose the Complainant's personal information.

**b. If the Organization did not have the authority to disclose the information without consent, did the Organization obtain the Complainant's consent in accordance with section 8 of the Act before disclosing the information? In particular,**

**i. Did the individual consent in writing or orally, or**

**ii. Is the individual deemed to have consented by virtue of the conditions in section 8(2)(a) and (b) having been met? or**

**iii. Is the collection, use or disclosure permitted by virtue of the conditions in section 8(3)(a), (b) and (c) having been met?**

[para 18] It is clear from the Complainant's submissions that she did not consent to the disclosure of her personal information. I also note that the Organization did not argue that the Complainant did consent. Therefore, I find that the Organization disclosed the Complainant's personal information without consent.

**3. Did the Organization disclose the information contrary to, or in accordance with, sections 19(1) and (2) of PIPA (disclosure for purposes that are reasonable and to the extent reasonable)?**

[para 19] As I have found that the Organization did not have the authority to disclose the Complainant's personal information, I do not need to make a finding regarding section 19 of the Act.

## **V. ORDER**

[para 20] I make this Order under section 52 of the Act.

[para 21] I find that the Organization disclosed the Complainant's personal information to other tenants in contravention of the Act and order that it cease doing so.

[para 22] I further order that the Organization provide training to its employees regarding the disclosure of personal information in the workplace.

[para 23] 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