

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER P2019-03

June 11, 2019

SERVUS CREDIT UNION LTD.

Case File Number 002568

Office URL: www.oipc.ab.ca

Summary: The Complainant and her common law partner jointly applied to Servus Credit Union Ltd. (the Organization) for a loan. They completed a form together entitled Personal Financial Statement which included their names, birthdates, social insurance numbers, address, employment information and financial information. The Complainant's partner says he delivered this form by hand to the Organization.

This Statement was sent to her common law partner's lawyer by the lawyer for his ex-wife.

The Complainant made a complaint to this Office that the Organization disclosed the Complainant's personal information to her common law partner's ex-wife, without the Complainant's consent and in contravention of the *Personal Information Protection Act* (PIPA).

The Adjudicator found that there was insufficient evidence to find that the information was disclosed by the Organization.

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

Authorities Cited: AB: Order P2019-02

I. BACKGROUND

[para 1] The Complainant and her common law partner jointly applied to Servus Credit Union Ltd. (the Organization) for a loan. They completed a form together entitled Personal Financial Statement (the Statement) which included their names, birthdates, social insurance numbers, address, employment information and financial information. The Complainant says that the Statement was filled out at home, and that the partner delivered it by hand to the Organization, when he met with the Branch Manager (Manager) in the fall of 2014.

[para 2] The Statement ended up in the possession of the Complainant's partner's ex-spouse. This was discovered when the Statement was sent as an attachment to correspondence by the lawyer for the partner's ex-wife to the Complainant's lawyer. This correspondence was sent to the partner's lawyer on December 22, 2015.

[para 3] The Complainant's partner also filed a complaint with this Office. That complaint is the subject of Order P2019-02. The Complainant and her partner made joint submissions to both inquiries. Whether the submission was written by the Complainant or her partner, I will refer to them in this Order as submissions and statements made by the Complainant.

II. ISSUES

[para 4] The Notice of Inquiry, dated November 3, 2017, states the issues for inquiry as the following:

1. Did the Organization disclose the Complainant's personal information to her common law partner's ex-wife?
2. If 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 sections 14, 17 or 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?

III. DISCUSSION OF ISSUES

- 1. Did the Organization disclose the Complainant's personal information to her common law partner's ex-wife?**

[para 5] "Personal information" is defined in section 1(1)(k) of the Act as "information about an identifiable individual." The information in this case is the information on the Statement, consisting of names, birthdates, social insurance numbers, address, employment information and financial information of the Complainant and her common law partner (whether the Organization disclosed the common law

partner's personal information is considered in Order P2019-02). The information in the Statement pertaining to the Complainant is her personal information.

[para 6] The Complainant confirmed that the Statement was filled out at home (rather than at the Organization's premises). The Complainant's partner then returned to the branch and spoke with a Branch Manager regarding the loan. The Complainant states that her partner brought the completed form to the meeting with the Manager to discuss the loan. For reasons that are not relevant here, the loan did not proceed. In the request for inquiry, the Complainant states that once it was determined that the loan would not proceed, her partner left the Statement with the Manager. The Complainant believes that someone at the Organization provided the Statement directly to her partner's ex-spouse.

[para 7] The Complainant provided a copy of a letter from the Organization to the Complainant (dated February 12, 2016), responding to the complaint made by the Complainant to the Organization regarding this same matter. The contents of this letter, including the background facts of the complaint and the findings of the internal investigation, are substantively the same as the Organization's submissions to this inquiry.

[para 8] With its initial submission, the Organization provided affidavits from the Branch Manager, and from the Organization's Privacy Officer, who conducted the internal investigation and who signed the February 12, 2016 letter.

[para 9] The Branch Manager states in his affidavit that he recalls meeting with the Complainant's partner in August 2014, regarding their intention to obtain a loan. This is apparently the meeting to which the Complainant states her partner brought the Statement. The Organization points out that in his submissions the Complainant states that the Statement was filled out in September 2014; the Organization argues that the Statement therefore could not have been brought to the August meeting. The Complainant responded to this point in her rebuttal submission, stating that she didn't have a clear recollection of the date this Statement was filled out. She states that she said as much to the Organization when she made the initial complaint to them (in December 2015). She further states that she told the Organization at the time that it was either August or September and simply chose September. Given the time that had passed between this loan application and when the Complainant discovered that her partner's ex-spouse had a copy of the Statement (over a year), I accept that the Complainant did not recall exactly when the Statement was filled out and that her reference to September 2014 was in error. Therefore, I give no weight to that apparent discrepancy.

[para 10] The Branch Manager states that he opened a new account for the Complainant's partner on the day of the meeting. The Complainant argues that this didn't occur as her partner already had his own accounts and the loan didn't end up proceeding. The Organization responded that a new account is set up for every loan application and that this new account was opened at the meeting then closed when the loan didn't proceed. It appears that this is an internal bank process that the Complainant (or any other bank customer) may not be aware of. I have no reason to doubt the Branch Manager on this point.

[para 11] The Branch Manager states that in processing the loan application on the Organization's electronic system, the Complainant's partner verbally provided the Manager with the necessary information. The Manager states that he did not see or receive the Statement. He states that he reviewed a copy of the Statement during the course of the internal investigation (at which time it was provided by

the Complainant to the Organization). He notes that there is a significant discrepancy between the financial information (income) written on the Statement and what the Manager entered into the system. While the Manager had previously stated that he *could not recall* seeing the Statement, the difference between the Statement and information entered into the system led him to *conclude* that he did not see the Statement. He states that he would have entered the amount as it appeared on the Statement, or asked the Complainant's partner about the significant discrepancy between the information on the Statement and the information provided verbally.

[para 12] The Manager also states that when he has such a Statement for a loan application, he often makes notations on the Statement. The copy of the Complainant's Statement does not contain the notations that the Manager would expect to see if he had had the Statement in the meeting.

[para 13] In the course of the internal investigation, the Manager spoke with all employees in the branch to ask if they had seen the Statement. All employees were asked to search their workspace and personal storage for the Statement. The Manager reviewed his own paper files for loan applications, as well as the paper files kept in the branch's document vault, for files listed under the Complainant's last name, her partner's last name, and "dozens of adjacent files" (affidavit at para. 30(d)). No copies of the Statement were located and no employee recollected seeing the Statement.

[para 14] The Manager states that it is his understanding that the manager at the other branch where the Complainant's partner does business also performed a similar search with the same results. The Privacy Officer confirmed in his affidavit that he directed the manager at the other branch to perform such a search and that the manager did not locate a copy of the Statement or have any recollection of the Statement.

[para 15] The Manager states in his affidavit that when he receives paper forms for a loan application (including Statements), he creates a paper file which is not digitized. These are stored in his office, in a locked cabinet, and only he has a key. He states that he did not create a paper file in this case because the loan did not proceed and that decision was made in the meeting with the Complainant's partner.

[para 16] The Privacy Officer noted that the copy of the Statement sent to the Complainant's partner by the ex-spouse's lawyer shows that the Statement was faxed from the ex-spouse's workplace to her lawyer. The Privacy Officer had the IT department search for outgoing faxes from the Organization to the ex-spouse's workplace. No such fax was found.

[para 17] The Privacy Officer also states that he contacted the ex-spouse and her lawyer to ask how they obtained the Statement. The lawyer declined to comment; the ex-spouse indicated she obtained it from a joint account shared with the Complainant's partner, via the Organization's Online Portal. The Privacy Officer states that it found this unlikely for several reasons.

[para 18] The first reason is that Statements are not digitized as a rule. The Manager confirmed that when paper files for approved loans are digitized, that unnecessary paper work is first removed. He states that Statements are removed and shredded (i.e. they are not uploaded onto the electronic system).

[para 19] The second reason is that the Organization's Online Portal does not have the capacity to store or grant access to member-generated, digitized content. The Privacy Officer states that he

confirmed this with the IT department. He states that if member documents are digitized, they are maintained on internal servers and not the Online Portal.

[para 20] The Privacy Officer also states that if the Statement had been stored in connection with the Complainant's partner's account, the Organization's policies would have made it accessible only to the partner and a limited number of Organization employees. The Manager states that documents stored on the electronic system are accessible only with approval from a district manager.

[para 21] The third reason is that the Statement was not located during a search of the Organization's electronic systems. The Privacy Officer states that the Organization's IT department conducted a search of the electronic systems, including a search for any loan application of the Complainant or her partner, a search of the electronic imaging database, and a search of the Organization's Member Relationship System. The Statement was not located.

[para 22] The Privacy Officer states that the Complainant's partner confirmed to the Organization that his usual banking statements are sent to the address of a family member who maintains contact with the ex-spouse. A copy of an email from the partner to the Organization (dated January 15, 2016), provided to me by both parties, confirms this.

[para 23] In the Organization's February 12, 2016 letter to the Complainant, the Organization concluded that a breach occurred, as the ex-spouse clearly possessed a copy of the Statement. However, the Organization could not determine how the ex-spouse obtained the copy. The Complainant has pointed to this letter as an admission from the Organization that it is the source of the Statement. The Organization states that it concluded there was a breach based on the fact that the ex-spouse had the Statement, but that it did not accept responsibility. I agree that the fact that a breach occurred is apparent and the mere statement of this fact is not an admission of responsibility.

[para 24] Given the evidence provided by the Organization, I find there is insufficient support to conclude that the Organization ever possessed a copy of the Statement, or that it disclosed the Statement to the Complainant's partner's ex-spouse (or anyone else). The Manager's explanation of his usual practice regarding Statements led him to conclude that he did not use the Statement in the loan application meeting with the Complainant's partner, and did not retain it. The Manager's conclusions on this point are reasonable. I also accept that it is unlikely the Statement would have been retained electronically, for the reasons provided by the Manager and Privacy Officer. It is also persuasive that no copy of the Statement was found during the thorough searches conducted by various employees of the Organization.

[para 25] As acknowledged by the Organization, it is clear that at some point, someone seems to have breached the privacy of the Complainant and her partner by providing the Statement to the Complainant's partner's ex-spouse. The Complainant seems to conclude that the only reasonable explanation is that the Statement was provided by someone in the Organization. My conclusion that the Organization was not responsible will likely not be particularly satisfactory, since it still leaves the question of who *is* responsible. I also want to add that I don't doubt the Complainant's belief that her partner left the Statement at the branch after his meeting with the Manager. It is possible that the Complainant's partner believes he left the Statement at the branch but didn't; it is also possible that the partner did leave the Statement at the branch but that the Manager wasn't aware that the Statement was

left and didn't notice it. There are many other possible scenarios but it is not helpful to speculate further, as there is insufficient evidence to come to any conclusion.

[para 26] The Complainant has suggested that a review of video surveillance of the branches from the relevant time period might show whether an employee of the Organization provided the Statement to the ex-spouse. It is unlikely that video surveillance from almost five years ago still exists. Further, the date range between the Complainant's partner's meeting with the Manager and the discovery that the ex-spouse had a copy of the Statement is approximately 15 months. That would encompass an enormous amount of video surveillance footage to view, in hopes of glimpsing an interaction that may not have taken place. Even if this Office undertook such investigative techniques as reviewing video surveillance, it is not a reasonable use of resources to review countless hours of video surveillance when there is insufficient evidence that anyone at the Organization had the Statement to provide to the ex-spouse.

[para 27] The Complainant also included screenshots of a conversation on FaceBook with an individual who stated the same branch of the Organization inappropriately disclosed banking information of the individual's family members to her. The Complainant seems to indicate that this branch has a history of not taking customer privacy seriously. I understand why the Complainant is drawing parallels to the case at hand but I cannot give weight to an unfounded allegation about a possible privacy breach discussed on social media.

[para 28] As I have do not have sufficient evidence to find that the Organization disclosed the Complainant's personal information to her partner's ex-spouse, I do not need to consider the remaining issues set out in the *Notice of Inquiry*.

IV. ORDER

[para 29] I make this Order under section 52 of the Act.

[para 30] I find that the Organization did not disclose the Complainant's personal information.

Amanda Swanek
Adjudicator