

**ALBERTA
INFORMATION AND PRIVACY COMMISSIONER**

**Report of an Investigation Concerning the
Disclosure and Security of Personal Information**

July 21, 2005

CBV Collection Services Ltd.

Investigation Report P2005-IR-006

I. INTRODUCTION

[1] In August 2004, the Office of the Information and Privacy Commissioner of Alberta (“OIPC”) received a complaint alleging that CBV Collection Services Ltd. (“CBV”) contravened the *Personal Information Protection Act* (“PIPA” or “the Act”).

[2] The complainant reported that a CBV employee faxed an Employee Verification Request form to the complainant’s place of employment, and specifically to a fax machine accessible by a number of the complainant’s co-workers. The complainant was concerned that any of these co-workers could have collected the fax and would have known that she owed a debt that a collection agency was trying to recover.

[3] The complainant alleged that in faxing the Employee Verification Request form to a non-confidential fax machine at her place of employment, CBV failed to adequately protect her personal information from access by unauthorized individuals.

II. JURISDICTION

[4] PIPA applies to provincially regulated private sector organizations in Alberta. The Act sets out the provisions under which organizations may collect, use or disclose personal information, and also places a duty on organizations to protect personal information in their custody or control against such risks as unauthorized access, collection, use, disclosure or destruction (section 34 of the PIPA).

[5] The Commissioner has jurisdiction in this case because CBV is an “organization” as defined in section 1(i) of the Act, operating in the province of Alberta.

[6] On August 26, 2004, the Information and Privacy Commissioner appointed me to investigate this matter. This report sets out my findings and recommendations.

III. FINDINGS OF FACT

[7] During this investigation, I spoke with the complainant who provided me with a copy of the Employee Verification Request form that was faxed to her place of employment. I spoke to, and exchanged correspondence with, the Privacy Officer for CBV, and reviewed the organization’s privacy and information security policies, Code of Conduct, and Permitted and Prohibited Practices document. I also spoke with a mailroom clerk at the complainant’s place of employment, as well as the intended recipient of the fax.

[8] The form faxed by CBV to the complainant’s place of employment was headed “CBV” and provided an Alberta address, telephone and fax number for the organization.

[9] The form was titled “Employee Verification Request” and included instructions to the complainant’s “Employer” to complete it and “return by fax at your earliest convenience.” It was addressed to the attention of a specific individual in the employer’s Payroll department.

[10] The complainant’s name and date of birth were filled in on the form, which also provided blank spaces for the employer to provide the following additional information:

- employee’s title, address, and telephone number
- length of employment (in years and months)
- employee’s rate of pay and pay dates
- employment status (full-time, part-time, or “other”, and an explanation if “other”)
- whether there was the possibility that the employee might be laid off and if so, an approximate date and reason
- confirmation as to whether a garnishee was being executed against the employee’s income and if so, an expected completion date
- number of dependants listed on the employee’s TD1 form
- whether the employee is paid by cheque or direct deposit and if direct deposit, the name and branch of the employee’s bank

[11] The name of the CBV employee sending the fax, and his direct telephone number, were filled in on the form.

[12] No fax cover sheet was sent with the transmission, but the following statement appeared at the end of the form:

IMPORTANT: The information contained in this fax transmission is privileged and confidential information intended for the use of the addressee listed and no one else. If you are not the intended recipient, do not use this information in any way but contact the sender immediately. Any use of this information by an unintended recipient is prohibited.

IV. ISSUES

- [13] 1. Did CBV disclose the complainant's personal information to her employer in contravention of PIPA?
2. Did CBV make reasonable security arrangements to protect the complainant's personal information?

V. ANALYSIS

1. Did CBV disclose the complainant's personal information to her employer in contravention of PIPA?

[14] PIPA applies to organizations in respect of personal information they collect, use and disclose. Section 1(k) of the Act defines "personal information" to mean "information about an identifiable individual."

[15] The complainant alleged that in faxing the Employee Verification Request form to her place of employment, CBV disclosed her personal information and specifically that she owed a debt that a collection agency was trying to recover.

[16] The organization stated that as the company name on the faxed form read "CBV," instead of the organization's full name "CBV Collection Services Ltd.," the form did not identify the sender of the fax as a collection agency, and did not, in and of itself, reveal that the complainant owed a debt or that a collection agency was trying to contact her. Therefore, it was CBV's position that the organization did not disclose the complainant's personal information when it faxed the Employment Verification Form to the complainant's place of employment.

[17] I do not accept the organization's position for the following reasons:

- Although the Employee Verification Request form was headed "CBV", and not "CBV Collection Services Ltd.," the fax header that printed out on the form when it was received appeared as "CBV Collection." Given the nature

of the information collected on the form, as well as the fax header identifying the sending organization as a collection agency, I find it likely that anyone seeing the faxed form and the complainant's name might reasonably conclude that the complainant owed a debt that a collection agency was trying to recover.

- The complainant's name and date of birth were filled in on the Employee Verification Request form and are personal information of the complainant.

[18] I therefore find that CBV disclosed the complainant's personal information when it faxed the Employee Verification Request form to the complainant's place of employment.

[19] I note that CBV's operations in Alberta are regulated under the *Fair Trading Act*. Section 116 of the *Fair Trading Act* requires collection agencies to identify themselves when attempting to collect a debt. The section states:

(1) No collection agency or collector may ...

- (c) if a collection agency, carry on the business of a collection agency in a name other than the name in which it is licensed, or invite the public to deal anywhere other than at a place authorized by the licence;*
- (d) if a collector, collect or attempt to collect a debt without using the name as shown on the collector's licence and the name of the collection agency that employs or authorizes the person to act as a collector, as that collection agency's name is shown on the collection agency licence ...*
- (k) give any person, directly or indirectly, by implication or otherwise, any false or misleading information*

[20] In determining whether CBV's disclosure of the complainant's personal information was in contravention of PIPA, I referred to section 20 of the Act, which states:

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: ...

- (b) the disclosure of the information is pursuant to a statute or regulation of Alberta or Canada that authorizes or requires the disclosure ...*
- (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*

[21] In first considering whether CBV's disclosure of the complainant's personal information was authorized or required by law, I noted that section 116 of the *Fair Trading Act* reads as follows:

(1) No collection agency or collector may...

(m) contact a debtor's employer, spouse or adult interdependent partner, relatives, neighbours or friends unless

(i) the person contacted is the employer of the debtor and the collection agency or collector is contacting the employer for the purpose of verifying the employment of the debtor

[22] Pursuant to section 20(b) of PIPA, and section 116(1)(m)(i) of the *Fair Trading Act*, CBV did not require consent to contact the debtor's employer in order to verify employment.

[23] However, I note section 19 of PIPA also states:

(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.

[24] Therefore, in contacting the debtor's employer to verify employment, CBV was required to disclose personal information only for reasonable purposes, and to the extent reasonable for meeting those purpose(s).

[25] In determining whether CBV's disclosure of the complainant's personal information was reasonable in the circumstances, I reviewed materials the organization developed to direct employees in contacting a debtor's place of employment. The CBV Code of Conduct states that CBV employees may "only contact the debtor's employer for the purpose of verifying the employment of the debtor." This is reiterated in the organization's Permitted and Prohibited Practices document, which permits "communicating with the debtor's employer to verify employment."

[26] The Code of Conduct and Permitted and Prohibited Practices documents are reviewed with all employees at the onset of employment as part of their initial training program.

[27] Notwithstanding these policy documents, the organization reported that an Employee Verification Request form is sent to a debtor's employer only in preparation to launch a legal action on behalf of a client. In the complainant's case, legal action was not contemplated considering the small amount owing on the complainant's account. Further, specific instructions from CBV's client stated that only the client would commence any required legal action, and not CBV. Given these circumstances, CBV acknowledged that its employee erred in sending the form to the complainant's employer as there was no business purpose for doing so.

[28] As a result, I find that CBV was not authorized under section 20(i) of PIPA to disclose the complainant's personal information to her employer. Section 20(i) requires that the disclosure be necessary in order to collect a debt. As the organization acknowledged its employee should not have contacted the complainant's employer to verify employment, I find the disclosure was not necessary in the circumstances. Further, although section 20(b) of PIPA may have authorized CBV to contact the complainant's employer without consent in order to verify employment, doing so in this case was not reasonable considering the circumstances of the complainant's debt, and specific instructions from CBV's client. As a result, I find CBV contravened section 19 of PIPA when it faxed the Employment Verification Request form to the complainant's employer without a reasonable business purpose for doing so.

2. Did CBV make reasonable security arrangements to protect the complainant's personal information?

[29] Section 34 of PIPA states:

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.

[30] The OIPC has developed Guidelines on Facsimile Transmission to assist public bodies, custodians, and private sector organizations in developing systems and procedures to reduce the risk of accidentally disclosing personal information when using a fax machine.¹ Among other things, these guidelines state:

- when transmitting personal information by facsimile, the sender should complete a fax cover sheet that clearly identifies both the sender and intended recipient

¹ Available on the OIPC website at http://www.oipc.ab.ca/ims/client/upload/Guidelines_on_Facsimile_Transmission.pdf

- the cover sheet should include a warning that the information is private and confidential and that the sending organization should be notified immediately if the information is received in error
- fax machines used to send or receive personal information should be located where unauthorized persons cannot see the documents
- the sender should contact the recipient to verify whether the complete transmission was received
- the sender should confirm that the receiver has taken appropriate precautions to prevent anyone else from seeing the faxed documents

[31] In this case, CBV faxed the Employee Verification Request form without an accompanying fax cover sheet. Although the form itself included a warning that the information was private and confidential and intended for the recipient only, anyone collecting the fax would have to read to the end of the page before seeing the confidentiality statement and would, by that time, be aware the form was from a collection agency and in regards to the complainant.

[32] The intended recipient of the fax reported that he had not been informed by CBV that the fax would be sent, nor did he receive any call from CBV to verify whether he had received it. CBV was unable to either confirm or rebut this statement as the employee who sent the fax was no longer employed by the organization. However, there was no documentation on CBV's debtor file to indicate the intended recipient had been contacted to advise of the fax transmission, nor does CBV have any policies or procedures in place requiring such notification, or requiring that the recipient be contacted to verify that a fax transmission was received.

[33] In this case, a mailroom clerk at the complainant's place of employment confirmed that the transmission was received on a fax machine located in a public area where it was potentially accessible by approximately 70 staff members. The faxed form was in fact collected by one of the complainant's coworkers and not the intended recipient.

[34] Given these considerations, I find that CBV contravened section 34 of PIPA by failing to make reasonable arrangements to mitigate the risks associated with sending personal information by fax. As a result, the complainant's personal information was accessed by an unauthorized individual.

VI. RECOMMENDATIONS

[35] In response to this incident and our Office's investigation, CBV revised its process for requesting verification of employment (VOE), and developed a

plan to communicate the new process in a memorandum for distribution to all offices across Canada. Among other things, the new process requires that:

- a Collection Supervisor verify that a VOE is authorized in the circumstances, and initial the form before it is sent
- the collector pre-arrange sending the VOE with the appropriate party at the debtor's place of employment
- fax transmissions must be sent to a confidential fax machine; if not available, the form must be sent by some other confidential method
- all fax transmissions must include a confidential cover sheet that does not state the name of the debtor
- the collector must confirm receipt of a fax or email within 30 minutes of sending it
- the collector must document the debtor's file to record the method of transmitting the VOE, name and title of the recipient, and the confidential fax number, email or mailing address to which it is sent

[36] To support this new process, CBV developed a new Confidential Cover Sheet for fax transmissions including space for the Collection Supervisor to authorize transmission. The organization also revised its VOE form to include contact information for CBV's Privacy Officer in the event the recipient has questions about the collection of personal information.

[37] CBV also revised the "Contacting the Employer" section of its Permitted and Prohibited Practices document to clarify that "Sending a Request for Verification of Employment (VOE) form by mail, fax or email" is permitted only when authorized by the collector's Supervisor and pre-arranged with the appropriate party at the debtor's place of employment.

[38] I have reviewed CBV's revised policies, forms and proposed communications plan and am satisfied with the organization's efforts in this regard.

VII. CONCLUSION

[39] The circumstances in this case illustrate that even where organizations have policies and procedures in place to address information privacy and confidentiality requirements, employees may still act to the contrary, and information breaches and complaints may result. Organizations need to be diligent in reviewing such policies and procedures with their staff on an ongoing basis, and in following-up any failure to comply. Organizations must also ensure that personal information is only disclosed when there is a reasonable purpose for doing so.

[40] With respect to transmitting personal information by fax, organizations must ensure their employees are aware of the potential risks involved, and implement appropriate measures to mitigate that risk.

[41] CBV cooperated fully with our Office during our investigation of this matter. This file is now closed.

Jill Clayton, Senior Portfolio Officer
Office of the Information and Privacy Commissioner