

**ALBERTA
INFORMATION AND PRIVACY COMMISSIONER**

**Report of an Investigation into the Collection and Retention
of Personal Information**

August 3, 2005

**Rick Arsenault Enterprises Inc., (Canadian Tire Associate Store 419)
and Ken Rice Retailing Inc., (Canadian Tire Associate Store 428)**

Investigation Report P2005-IR-007

I. INTRODUCTION

[1] In August 2004, this Office received a complaint that a Canadian Tire Store in Calgary (owned by Rick Arsenault Enterprises Inc.) refused to complete a return of goods transaction unless the customer provided certain personal information. In February of 2005, the Commissioner received the same complaint concerning a Canadian Tire store in Sherwood Park, owned by Ken Rice Retailing Inc. The complainants in these cases alleged that personal information was collected in contravention of Alberta's *Personal Information Protection Act* ("PIPA" or "the Act").

II. JURISDICTION

[2] The Act applies to provincially regulated organizations. The Commissioner has jurisdiction in this case because the two Canadian Tire Stores are "organizations" as defined in section 1(i) of the Act.

[3] Following the receipt of these complaints, the Commissioner authorized me to conduct an investigation under subsection 36(2)(e) of the Act and to attempt to bring the matter to a successful conclusion. This report represents my findings and recommendations.

III. INVESTIGATION

[4] In conducting this investigation, I interviewed the complainants, and the managers and owners of both stores, and the stores' legal counsel. I also received a submission from the Retail Council of Canada and from the Canadian Tire Dealers' Association (CTDA). The Calgary and Sherwood Park stores are two of more than 450 Canadian Tire Stores across Canada; these stores operate under Associate Dealer Agreements with Canadian Tire Corporation Limited. All Canadian Tire Associate Stores operate under a standard merchandise refund policy. Although all these stores operate their own independent businesses, they do so within the framework of the policies and procedures established by Canadian Tire Corporation Limited under the Associate Dealer Agreements.

[5] With the consent of the complainants and organizations, I held off completing my investigation and report because the Office of the Information and Privacy Commissioner of British Columbia had begun to investigate a similar complaint about the practices of a Canadian Tire store prior to our receipt of these complaints. Alberta's PIPA is very similar to the B.C. law, also called the *Personal Information Protection Act*. On May 25, 2005, the Information and Privacy Commissioner for B.C., David Loukidelis, issued an order concerning the collection of customer information in the return of goods process.¹ I will refer to that order in this report.

IV. THE COMPLAINTS

[6] The investigation into these complaints concerns whether PIPA permits a retailer to require someone who is returning goods to provide identifying personal information, specifically the person's drivers' licence (D/L) number, for the purpose of combating fraudulent returns of goods. The complainant in the case of the Sherwood Park store did not have an issue with the recording of name and address during the transaction, but complained that the store insisted on "producing and recording and keeping on file his drivers' licence". In the case of the Calgary store the complaint was essentially the same.

[7] Because the complainants were not concerned with the collection and recording of their names, addresses and telephone numbers I will consider only the collection, recording and retention of D/L numbers in this context. I note that Commissioner Loukidelis in his recent order found that collecting names, addresses and telephone numbers to be acceptable under B.C.'s PIPA, but he did not address the recording of

¹ Order P05-01 [2005] B.C.I.P.C.D. No. 18(Q.L.). See <http://www.oipc.bc.ca/orders/OrderP05-01.pdf>.

D/L numbers. His reasons for reaching that conclusion are persuasive in my view for the purposes of Alberta's PIPA .

V. ISSUES

- 1. Is the organizations' purpose for collecting drivers' license numbers reasonable?**
- 2. Does the retention of drivers' license numbers contravene the Act?**

VI. ANALYSIS

- 1. Is the organizations' purpose for collecting drivers' license numbers reasonable?**

[8] Section 11 of PIPA provides as follows:

11(1) An organization may collect personal information only for purposes that are reasonable.

11(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.

[9] I find that D/L numbers are "personal information" because the numbers are attributed to an identifiable individual.

[10] Section 7(2) of PIPA is also relevant to this case. It provides as follows:

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.

[11] The Calgary store stated that it collects and (in some cases) retains identifying personal information from individuals who seek to return goods for the purpose of identifying and deterring fraud.

[12] The organizations explained that a significant percentage of profits are lost each year to theft and fraud. Stolen merchandise is frequently returned to the stores for fraudulent refunds. The organizations have various loss-reduction measures, but still incur losses from fraud and attempted fraud in the return of goods stolen from the stores.

[13] The organizations stated that the collection of some personal information is “essential” to help the stores determine whether or not a fraudulent return is being attempted. In its brief in the B.C. Commissioner’s inquiry into an issue similar to this one, (reproduced here with consent) the Retail Council of Canada stated that:

“...criminals abhor visibility. Our members advise us that the mere request for personal information will cause some customers to refuse or leave the desk immediately. Our members recognize that some legitimate customers genuinely object to providing personal information. But it has also proven to be a strong indicator of fraud. Those retailers who ask for an address to which they can send a cheque reimbursing the customer are confident that a customer who refuses this information has a high likelihood of being a fraudster. The normal business response is simply to decline to accept a return of the product.”²

[14] During my investigation, the owner of the Calgary Store and the CTDA agreed that simply asking for a name, address and telephone number (not in itself sensitive information), and asking the individual to confirm identity with photo identification is sufficient to deter and detect fraud.

[15] The owner of the Sherwood Park store said that the normal process is to collect name, address and telephone numbers from the customer, and then to ask for picture identification (such as a D/L) to confirm identity. The owner and store manager said that the store’s policy is **not** to collect or retain D/L numbers in the stores’ electronic or paper systems. The complainant in the Sherwood Park store alleged that an employee entered his D/L number into the computer system; however, during the investigation I found that although some of the complainant’s personal information was retained in the store’s computer system, his D/L number was not. Although one screen in the merchandise return system allowed for the collection of D/L or other ID numbers, no D/L numbers were recorded in the Sherwood Park store’s computer records. In the Calgary store, D/L numbers were collected and retained in the system.

[16] Both stores, as well as the CTDA agreed that simply authenticating and confirming the identity of the individual returning goods is sufficient for their purposes. This amounts to a concession by the organizations that collection and retention of D/L numbers is not necessary for the business purpose of deterring fraud. If the collection of D/L number is not necessary for a business purpose, it cannot, as required by section

² Ibid., page 6.

11(2), be reasonable for meeting the purposes for which the information is collected. It follows that section 11(2) has not been met and the collection of D/L numbers in the return of goods process contravened section 11(2) of the Act.

[17] It further follows that the Calgary store contravened section 7(2), since an organization cannot require someone to consent to collection of personal information that is not necessary.

[18] The owner of the Calgary store ceased collecting and recording D/L numbers upon receiving notice of the complaint. Instead, he agreed to implement a process whereby the staff member would record only that the name and address was confirmed with photo ID, recording the *type* of photo ID reviewed by staff (D/L, student ID, etc.) but not recording D/L or other particulars of the ID itself. As a result no D/L or other ID numbers have been collected from customers returning merchandise to the store since September 15, 2004.

[19] As a result of this investigation, Canadian Tire Corporation Limited, in consultation with the CTDA, is in the process of redesigning the merchandise return computer program. This program is in use across all 450 plus Canadian Tire Stores. As a result of the redesign, no store will be able to enter a D/L or other ID number on to the computer system. The computer program changes will be in place by the end of 2005.

2. Does the retention of Drivers' License numbers contravene the Act?

[20] Section 35 of the Act states that:

Notwithstanding that a consent has been withdrawn or varied under section 9, an organization may for legal or business purposes retain personal information as long as is reasonable.

[21] This provision requires organizations to limit the retention of personal information. It requires organizations to establish maximum periods of retention that meet legal (such as statutory limitation periods for civil lawsuits) and business needs. The Calgary store confirmed that the personal information collected in processing return of goods is retained indefinitely. I viewed the Sherwood Park store's computer screens used by customer service personnel when issuing refunds. The first screen contains data elements for name, home phone number, and ID type. Although it is possible for ID such as D/L numbers to be entered into the system, none of this information was collected or retained in the system.

[22] The organizations agreed that the collection of D/L information is **not** required for the business purposes and I have reached the view that its collection is not permitted by section 11(2) and section 7(2) of PIPA. An organization cannot retain personal information that it has collected contrary to PIPA.

[23] Section 35 does not permit the organization to retain the D/L numbers of customers collected when they returned goods; therefore, the Calgary store retained the information in contravention of the Act.

[24] The CTDA Association is currently revamping its national privacy policies, including establishing retention periods for records. This office commends the Association on this initiative.

VII. CONCLUSION

[25] It is **not** reasonable for these organizations to collect and retain the D/L numbers of individuals who are returning merchandise. It is reasonable in some cases to ask for photo identification to confirm identity, but not to record this information.

VIII. RECOMMENDATIONS

[26] In light of these findings, I make the following recommendations to the Calgary store:

- Purge the electronic and paper systems of D/L numbers;
- Confirm with this office that this data has been eliminated from the system by December 2005;
- Train front-line staff in the policy and procedures regarding collection of personal information in returns of goods;
- In light of the commitments from the CTDA and Canadian Tire Corporation Limited (see below), no further action is required.

IX. COMMENTS:

[27] During the investigation, the CTDA agreed to:

- Take steps to remind Canadian Tire Associate Dealers across Canada that D/L or other forms of ID may be used to verify customer identity when processing returns, but may not be recorded either onto the store computer or any paper record when processing such transactions;

- Change the computer system for merchandise returns to eliminate the possibility of recording D/L or other ID numbers; and
- Communicate with all Associate Dealers in Canada to ensure that they are operating in compliance with applicable privacy legislation and in compliance with any corporate merchandise return policies and procedures which require modification as a result of this report and Commissioner Loukidelis' Order. This communication will assist in harmonizing the practices across all Canadian Tire stores.

[28] During the investigation, Canadian Tire Corporation Limited, in consultation with the CTDA, has committed to:

- Purge any D/L numbers or other ID numbers which may have been recorded on computers operating in Canadian Tire Associate Stores across Canada.

[29] All parties cooperated fully with this investigation.

[30] This file is now closed.

Elizabeth Denham, Director
Personal Information Protection Act
Office of the Information and Privacy Commissioner