

**ALBERTA  
INFORMATION AND PRIVACY COMMISSIONER**

**Report of an Investigation Concerning  
the Collection and Use of Personal Information**

**April 3, 2006**

**CIR Realtors and PDL Mobility Limited**

**Investigation Report P2006-IR-002**

**I. INTRODUCTION**

[1] The Office of the Information and Privacy Commissioner of Alberta (“OIPC”) received a complaint alleging that CIR Realtors (“CIR” or “the Organization”), through its agent PDL Mobility Limited (“PDL”), collected and used personal information in the form of a recorded telephone conversation, in contravention of the *Personal Information Protection Act* (“PIPA” or “the Act”).

**II. JURISDICTION**

[2] 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.

[3] The Information and Privacy Commissioner has jurisdiction in this case because both CIR and PDL are “organizations” as defined in section 1(i) of the Act, operating in the province of Alberta.

[4] In response to this complaint, the Commissioner authorized me to investigate. This report sets out my findings and recommendations.

### **III. INVESTIGATION AND BACKGROUND**

[5] In investigating this matter, I initially spoke with the Complainant, as well as the Privacy Officer for CIR and a CIR Office Manager. I reviewed the Organization's privacy policies, "Standard Brokerage/Agent Contract", the service agreement between CIR and PDL, and the recorded telephone conversations at issue.

[6] I also spoke with PDL's Privacy Officer and the Customer Care Manager responsible for handling CIR's account with the call centre. I reviewed the script read by PDL staff when answering calls on behalf of CIR, and documentation related to PDL's Voice Logger services. I also spoke with PDL's legal counsel, and exchanged correspondence.

#### **The Complainant**

[7] The Complainant was a realtor with CIR at the time of the incident. On the Friday before the incident, the Complainant arranged for an advertisement of his services to appear in a newspaper. The advertisement listed the Complainant's first name, and provided CIR's office telephone number as a contact number.

[8] When the Complainant did not receive any calls in response to his advertisement, he called the CIR office number. His call was answered by a CIR receptionist who had no record of the Complainant as a realtor with CIR. The Complainant explained who he was and that the advertisement had been placed in the newspaper. Despite this discussion, the Complainant reported he was still concerned that CIR might not forward calls to him.

[9] The Complainant called the CIR office again later that day to see for himself how his calls were being handled. The call was answered by a PDL call centre agent who also had no record of the Complainant as a realtor with CIR. In his report to this Office, the Complainant stated he felt this was "absolutely unacceptable" and as a result he "sternly reprimanded the receptionist." In contrast to the Complainant's report of this conversation, PDL characterized the Complainant as "abusive, vulgar and possibly harassing."

[10] The Complainant thereafter called CIR an additional three times and found, on each occasion, the call centre had not corrected the problem. He eventually spoke with a PDL supervisor, but reported the conversation did not convince him the matter was being taken seriously.

[11] On the Monday after the weekend on which this occurred, the Complainant was called into the Manager's office at CIR and was told his employment with CIR was being terminated.

[12] The Complainant reported he was “shocked” when the Manager played back his conversations with the call centre agent as the Complainant had not been aware the calls were recorded, and he had not consented to the taping of his conversation. He subsequently submitted a complaint to this Office alleging that CIR had “violated his privacy” by recording his conversations without his consent or knowledge.

### **PDL Mobility**

[13] PDL’s website describes it as “a 24 hour web enabled call centre providing businesses with professional inbound and outbound tele-service for over 10 years.”

[14] The company provides front line reception services under a service agreement with CIR. The agreement does not detail the specific services being provided; however, it is understood by both parties that PDL answers after-hours telephone calls on behalf of CIR. In the agreement, CIR agrees to pay both “service charges” and “usage charges.”

[15] PDL advised me that all clients are made aware at the time the service agreement is signed that calls are recorded and monitored, and that the “service charges” referenced in the agreement are intended to include PDL’s Voice Logger services (the system used to record telephone conversations). PDL stated that although all calls are recorded, clients must pay an additional fee to have access to the recordings. PDL did not provide a response when asked whether CIR paid this additional fee.

[16] PDL reported that a circular was provided to CIR in November 2002 describing the “new voice logging system” and the two parties discussed the service in December 2004. It is PDL’s current practice to provide Voice Logger system documentation to clients at the time the service agreement is discussed.

[17] Voice Logger system documentation describes it as “a software-based call recording solution that automatically records all [PDL] agent involvement with incoming and outgoing calls.” The materials state that the system is turned on as soon as a PDL agent logs in to his/her workstation, and “can only be turned off by a supervisor.” Voice Logger stops recording once a call has been patched or transferred to voice mail.

[18] Although Voice Logger system documentation states that the system can be turned off by a supervisor, PDL informed me that the call recording system could not be turned off.

[19] PDL's Voice Logger documentation further states that the system allows PDL's agents to:

*... confirm they have the correct information on calls by allowing them to replay messages to confirm a caller's name, phone number and more. The Voice Logger also allows PDL to verify that critical conversations were handled appropriately. In addition, calls may be replayed for clients, allowing them to hear the actual conversations exactly as they happened.*

[20] PDL's Privacy Officer reported that PDL itself uses the recorded calls for internal purposes of "quality control" and "remuneration of staff members."

[21] Voice Logger call records are saved as a digital file on a networked hard drive. Each recording is also saved in a database. PDL reported that the files are not overwritten, but instead are stored in case they are needed at a future date – for example, to respond to a subpoena.

[22] The script that PDL agents follow in answering CIR calls was provided to PDL by CIR. It does not include any statement notifying callers that calls are being recorded, for what purposes, or who to contact in the event a caller has questions about the recording of the call.

[23] PDL advised me that, on occasion, a client might specifically request a script that informs callers they are being recorded. However, as clients pay PDL in part based on the length of time an agent is on the line, costs will be higher if clients require PDL to advise callers they are being recorded.

[24] The terms and conditions listed on the reverse of the service agreement between CIR and PDL do not include any provisions addressing the collection, use or disclosure of personal information except to state that "all communication will be treated as confidential as will any information provided under this contract. None of the services provided under this contract can be used for any illegal or illegitimate purpose."

### **CIR Realtors**

[25] CIR initially informed me that they were not aware that calls answered by PDL on their behalf were recorded. The Organization later clarified that they were aware the calls were being recorded, and believed this to be PDL's standard practice; however, CIR stated they did not specifically request this service.

[26] CIR's Office Manager reported that, on the Monday after the weekend of the incident involving the Complainant, he received a call from PDL reporting what had happened. PDL subsequently emailed an electronic file of the Complainant's recorded calls to the Office Manager.

[27] The Office Manager does not recall if he requested the recordings, or if PDL volunteered to send them. However, PDL reported that it “provided CIR with a copy of the voice logger data with respect to this particular caller and call at CIR’s request ... the data does not go to the client except if requested.”

[28] The Office Manager reviewed the recording with the Complainant and “as a result of [the Complainant’s] actions, made the decision to terminate the contract between this realtor and CIR.”

[29] I reviewed CIR’s policies with respect to the collection, use and disclosure of personal information but found these materials did not address personal information collected through call recording.

[30] CIR reported that they have no documentation on file concerning PDL’s Voice Logger system, despite PDL’s assertion that information was provided in 2002.

#### **IV. ISSUES**

- [31]
1. Did CIR, through its agent PDL, collect and use the Complainant’s personal information in contravention of PIPA?
  2. Did PDL collect the Complainant’s personal information in contravention of PIPA?

#### **V. ANALYSIS**

##### **1. Did CIR, through its agent PDL, collect and use the Complainant’s personal information in contravention of PIPA?**

[32] Section 5(2) of PIPA states:

*(2) For the purposes of this Act, where an organization engages the services of a person, whether as an agent, by contract or otherwise, the organization is, with respect to those services, responsible for that person’s compliance with this Act.*

[33] CIR and PDL have entered into a service agreement whereby PDL provides front-line reception services on CIR’s behalf. Therefore, pursuant to section 5(2) of the Act, CIR is responsible for PDL’s compliance with the Act with respect to the provision of those services, and specifically where this involves the collection, use or disclosure of personal information.

[34] “Personal information” is defined in section 1(k) of PIPA to mean “information about an identifiable individual.” In determining whether the recording of the Complainant’s telephone conversation constitutes “personal information” under the Act, I referred to the Fact Sheet on *Best Practices for Recording of Customer Telephone Calls*, published by the Office of the Privacy Commissioner of Canada.<sup>1</sup> This document states that “taping telephone calls involves the collection of personal information.” In addition to the identity of the caller and the subject of the conversation, recorded telephone conversations:

- ... will capture incidental information that the service representative might not note - information that may not be germane to the call but could be used by the organization for other purposes;
- ... will capture the caller's tone of voice, that could also be used for other purposes such as a legal proceeding; and
- ... can be used to infer information about the caller, for example ethnic origin and age that is not relevant to the purpose of the call.

[35] As such, I find that the recording of the Complainant’s telephone conversation is “information about an identifiable individual,” and qualifies as “personal information” under the Act.

[36] The Complainant in this case was a realtor under contract with CIR at the time, and thus an employee of the Organization pursuant to section 1(e) of PIPA, which defines “employee” to include:

*... an individual who performs a service for or in relation to or in connection with an organization ... (ii) under a contract or an agency relationship with the organization...*

[37] “Personal employee information” is a subset of personal information. It is defined in section 1(j) of the Act to mean:

*(j) ...in respect of an individual who is an employee or a potential employee, personal information reasonably required by an organization that is collected, used or disclosed solely for the purposes of establishing, managing or terminating*

*(i) an employment relationship ...*

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<sup>1</sup> Available online at [www.privcom.gc.ca](http://www.privcom.gc.ca)

*between the organization and the individual but does not include personal information about the individual that is unrelated to that relationship;*[emphasis added]

[38] An organization can collect “personal employee information” without consent provided the collection complies with the provisions set out in section 15(2) of the Act.

[39] In determining whether the information at issue is personal employee information under the Act, I considered that CIR reported that although they were aware calls answered on their behalf by PDL were being recorded, CIR did not request this service and had no intended business purpose for the collection.

[40] As CIR had no business purpose for collecting the information, I find that the recorded telephone conversation in this case does not qualify as personal employee information under PIPA, as the information cannot be said to have been collected “solely for the purpose” of recruiting, managing, or terminating the employment relationship between the Complainant and CIR.

[41] However, the information is still “information about an identifiable individual” and is therefore “personal information” under section 1(k) of the Act. As such, section 7(1) of the Act applies. This provision states:

*(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 ...*

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

[42] Section 13 also applies, and reads as follows:

*(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.*

[43] In this matter, CIR collected the Complainant's personal information when its agent, PDL, recorded the telephone conversation. The Complainant was not told that the call was being recorded or the purposes for the recording.

[44] As a result, the Complainant had no opportunity to either provide or refuse consent for the collection or use of his personal information. He was also not provided with the name of an individual who could answer any questions he might have regarding the collection of his personal information.

[45] Given the above, I find that CIR contravened sections 7(1)(a) and (c) of PIPA when its agent, PDL, collected the Complainant's personal information by recording his telephone conversation without consent, and when CIR subsequently used the information without consent for employment management purposes. CIR also contravened section 13(1) of PIPA when it failed to inform the Complainant of the purposes for which his personal information was collected and the name of someone who could answer his questions about the collection.

[46] I also find that CIR contravened section 11(1) of the Act. This section reads as follows:

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

[47] As stated above, CIR has reported that it had no intended business purpose for recording telephone calls. Nonetheless, the Complainant's personal information was collected by PDL, acting as CIR's agent. Pursuant to section 5(2) of PIPA, CIR is responsible for that collection of personal information. As CIR had no business purpose, reasonable or otherwise, I find the collection to be a contravention of section 11(1) of the Act.

[48] In its submission to this Office, PDL asserted that it "was acting in good faith" and "reasonably when it disclosed the recording to CIR as it was acting at the request of and in accordance with its agreement with CIR." Further, PDL submitted that because the collection of information "allegedly recorded a wrongful act, [it] was fully disclosable to CIR." PDL specifically stated:

*Legislation is not intended to protect or shelter wrongdoers. In cases such as these, where there is an alleged element of abuse or harassment, which may constitute a separate actionable wrong, as a matter of policy the person perpetrating the abuse or harassment should not receive the benefit of and be entitled to hide behind the mantle of legislative protection.*

[49] Although PDL reported they were recording calls "at the request of and in accordance with" their agreement with CIR, I note that the service agreement

between the two organizations makes no mention of call recording. Although CIR was aware that calls were recorded, the Organization claims it had not requested the service.

[50] Even if call recording was included in the service agreement between CIR and PDL, I nonetheless reiterate my finding that the Complainant's information was collected in contravention of PIPA as consent was not obtained, there was no notification of purpose(s), and CIR has stated it had no business purpose for having its agent collect this personal information.

[51] Further, PDL's assertion that the personal information "was fully disclosable to CIR" as it "allegedly recorded a wrongful act" is also indefensible.

[52] PIPA does include provisions allowing for the collection, use and disclosure of personal information without consent in certain circumstances, including, for example, where "reasonable for the purposes of an investigation or legal proceeding" [section 14(d)]. An "investigation" is defined in section 1(f) of the Act to include an investigation related to "circumstances or conduct that may result in a remedy or relief being available at law."

[53] Had the Complainant's personal information been collected and used without consent as part of such an "investigation," this may have been authorized under PIPA. However, neither CIR nor PDL reported or provided any evidence that the Complainant's call was recorded for the purposes of an investigation. Instead, CIR reported that it had no purpose for collecting the information and had not requested calls be recorded; PDL reported that it is their practice to record all calls. Given these statements, I cannot find that the collection and use of the Complainant's personal information by recording the telephone call was for purposes of an investigation or legal proceeding.

[54] Further, I note PIPA also allows organizations to collect and act on (use) complaints regarding employee conduct. This information would generally qualify as "personal employee information" under the Act where the information is "reasonably required" to manage the employment relationship. In such circumstances, organizations will not require consent to collect and use such information; however, where the personal employee information is about a current employee, sections 15(2)(c) and 18(2)(c) of the Act require that the individual be provided with reasonable notification that the information is going to be collected and used.

[55] In this case, CIR's "Standard Brokerage/Agent Contract" binds agents to agree to "represent the Brokerage in a professional and ethical manner, and work in a spirit of cooperation with other salespeople as well as the management and employees of the Brokerage." Further, the Contract recognizes that "claims, complaints or litigation involving the Brokerage, may arise directly from the activities of the Agent ... [and the Brokerage] reserves

the right to defend any such complaint, claim or litigation as it, in its sole discretion, sees fit.”

[56] In making these statements in the contract between the Brokerage and its agents, CIR provided notification that it will collect and act on complaints regarding the professional and ethical behaviour of agents. However, in the specific matter under consideration here, I note that the recording of the Complainant’s telephone conversation was not originally collected as part of a complaint. It also was not collected as personal employee information, and so the provisions in the Act respecting consent were in effect.

## **2. Did PDL collect and use the Complainant’s personal information in contravention of PIPA?**

[57] As noted previously, under section 5(2) of PIPA, CIR is responsible for PDL’s compliance with the Act with respect to PDL’s provision of contracted services on CIR’s behalf.

[58] However, section 5(6) of the Act goes on to state:

*(6) Nothing in subsection (2) is to be construed so as to relieve any person from that person’s responsibilities or obligations under this Act.*

[59] Pursuant to section 5(6) of PIPA, in collecting, using or disclosing personal information for its own business purposes, PDL is subject to the provisions set out in the Act.

[60] During the course of this investigation, PDL’s Privacy Officer reported that PDL records calls for its own internal purposes of “quality control” and “remuneration of staff members.” Documentation regarding the Voice Logger system also states that recording calls allows PDL’s agents to “replay messages to confirm a caller’s name, phone number and more” and “verify that critical calls were handled appropriately.”

[61] In its written submission to this Office, PDL additionally reported that:

*PDL did have a reason to record the conversations (for accuracy, as part of their service agreement with their client, and to create a record of their activities for security purposes).*

[62] In recording calls for all these purposes (excepting “as part of their service agreement with their client” which has already been addressed above), PDL is collecting personal information for its own business purposes and the provisions of PIPA will apply.

[63] Section 7(1) of the Act states:

*(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,...*

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

[64] Section 13(1) also applies. This section states:

*(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.*

[65] In recording telephone calls for internal “quality control” and other internal purposes as set out above, PDL is collecting personal information. As such, when PDL collected the Complainant’s personal information without first obtaining consent or providing notification of the purposes for the collection, PDL contravened sections 7(1) and 13(1) of PIPA.

## **VI. RECOMMENDATIONS**

[66] Given my findings in this matter, I made the following recommendations to CIR:

- Develop new policies and procedures, or revise existing ones, to describe and clarify the organization’s collection, use and disclosure of personal information through recorded telephone calls.
- Ensure that the script read by PDL agents when answering calls on behalf of CIR informs the caller that the call is being recorded, the purposes for the recording, and the name of someone who can answer the caller’s questions about the recording.
- Implement procedures for responding to a caller who refuses to consent to having the call recorded.
- Review the service agreement in place between CIR and PDL to identify personal information that may be collected under the service agreement and specifically address issues such as:

- custody, control and ownership of the information
- the purposes for which the information may be collected, used and disclosed by both CIR and PDL
- retention and destruction of the information
- how individuals may obtain access to their own personal information
- security measures to protect the personal information

[67] In response to these recommendations, CIR chose to make a written request to PDL that they cease recording any calls answered on CIR's behalf. I therefore request that CIR confirm to this Office on or before April 28, 2006, that this procedural change has been implemented.

[68] I also make the following recommendations to PDL:

- Develop policies and procedures to describe its own internal collection, use and disclosure of personal information through recording telephone calls.
- Ensure that whenever PDL is recording telephone calls for its own internal purposes, the caller is informed that the call is being recorded, the purposes for the recording, and the name of someone who can answer the caller's questions about the recording. PDL must also develop a procedure for responding to a caller who refuses to consent to having the call recorded.
- Confirm to this Office on or before April 28, 2006, that these recommendations have been implemented.

## **VII. CONCLUSION**

[69] The recording of telephone conversations by organizations raises a number of significant privacy issues. For useful information on ensuring this practice is compliant with applicable privacy legislation, organizations are encouraged to review the Fact Sheet developed by the Office of the Privacy Commissioner of Canada entitled *Best Practices for Recording of Customer Telephone Calls*, as well as a number of case summaries that address these issues under federal privacy law. These materials are available online at [www.privcom.gc.ca](http://www.privcom.gc.ca).

[70] This file is now closed.

Jill Clayton, Senior Portfolio Officer  
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