

**ALBERTA
INFORMATION AND PRIVACY COMMISSIONER**

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

April 10, 2007

EPCOR Utilities Inc.

Investigation Report #P2007-IR-004

I. INTRODUCTION

[1] In January 2007, the Office of the Information and Privacy Commissioner of Alberta (“OIPC”) received a complaint alleging that EPCOR Utilities Inc. (“EPCOR”) collected, used and disclosed personal information in contravention of the *Personal Information Protection Act* (“PIPA”).

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 EPCOR is an “organization” as defined in section 1(i) of PIPA, 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 EPCOR's Chief Compliance Officer. I reviewed EPCOR's written response to the Complainant's allegations which included copies of email correspondence, as well as the following policies:

- EPCOR Privacy Policy for Employee Information
- EPCOR Privacy Standards and Procedures for Employee Information
- EPCOR Security Roles and Responsibilities
- EPCOR IT Security Roles and Responsibilities

[6] The Complainant in this matter was an EPCOR employee. In October 2006, he requested a leave of absence from EPCOR, stating the reason for the leave was "life changing events, opportunity to travel." His request was approved by his supervisor.

[7] The Complainant reported that shortly before requesting the leave of absence he had been involved in a dispute with an EPCOR Manager with the Corporate IT Security Team ("the Manager"). Although the matter was resolved, the Complainant stated that these "newly developed professional stresses coupled with numerous personal stresses" led to his decision to "take a break from EPCOR." EPCOR reported that the incident referenced by the Complainant involved an alleged contravention of EPCOR IT Security policy by the Complainant, and the Manager's involvement was consistent with his IT Security role and corporate policies.

[8] Shortly after the Complainant began his leave of absence from EPCOR, he accepted employment with another company ("Company A").

[9] Approximately a week later, his EPCOR supervisor contacted him by telephone. The Complainant reported the supervisor "informed me of new leave conditions that [sic] any employment position I accepted without prior approval from EPCOR would be considered a resignation of my employment from EPCOR." According to the Complainant, the supervisor inquired about the Complainant's "employment status elsewhere." The Complainant "chose not to disclose any information."

[10] In his submission to this Office, the Complainant reported that approximately one week after the telephone conversation with his supervisor, EPCOR contacted Company A. The person who made the contact was the same Manager referenced above.

[11] The Complainant reported that in contacting Company A, the Manager claimed

.... to be acting as an agent of EPCOR ... [and] operated once again without any valid consent or approval, and ... completely out of the context of his ... role. ... [The co-worker] disclosed my personal information and made unfounded claims of conflict(s) of interest. As a result of this disclosure, [Company A] exercised the probationary period and immediately terminated my employment. ... I suspect the contact and disclosure by [the co-worker] was of a vindictive nature, had malicious intent, and served as retribution by slandering my reputation.

[12] The Complainant subsequently submitted a complaint to this Office, copied to EPCOR, and alleging a number of contraventions of PIPA, including that EPCOR:

- collected, used and disclosed his personal information without consent
- disclosed his personal information without a reasonable purpose
- disclosed inaccurate personal information
- failed to make reasonable security arrangements to protect his personal information from unauthorized access
- did not notify him that his personal information would be collected, or the purposes for the collection.

IV. ISSUES

- [13] 1. Did EPCOR collect, use and disclose the Complainant's personal information in compliance with PIPA?
2. Did EPCOR disclose inaccurate personal information about the Complainant?
3. Did EPCOR make reasonable security arrangements to protect the Complainant's personal information from unauthorized access?

V. ANALYSIS

1. Did EPCOR collect, use and disclose the Complainant's personal information in compliance with PIPA?

[14] The personal information *collected* and *used* by EPCOR consists of (1) an unsolicited email string sent to the EPCOR Manager, and (2) additional information provided by Company A to EPCOR pursuant to an EPCOR request.

[15] I reviewed the email string in question. It appears that news of the Complainant's employment with Company A was included in a personal email sent by an employee of Company A to a professional/personal colleague working for another organization (not EPCOR). This email named the Complainant, and stated that he was "starting here Monday" in a specific position. The employee's colleague subsequently forwarded the email to another individual who was working for EPCOR as a contractor, commenting "Note the remark about [the Complainant]." This individual in turn forwarded the email to the EPCOR Manager, who subsequently provided it to a Human Resources (HR) Consultant at EPCOR.

[16] Based on the email contents, the HR Consultant decided to request verification from Company A of the Complainant's employment there. She requested the EPCOR Manager undertake this activity. As a result, the Manager sent an email to Company A, which stated:

I am investigating an issue with our HR dept regarding an EPCOR employee that is alleged to be also working in contract [sic] position with [Company A] ... The person

of interest is a gentleman named [Complainant's name] On [date] he started a LOA from EPCOR on the grounds of going travelling. It has since been alleged that instead of travelling, on [date] he started a position as an independent contractor with [Company A] performing [specified duties]. I'm hoping you can provide me with a formal confirmation or denial of that.

[17] Company A responded to the request in an email stating that the Complainant's supervisor at Company A had been asked to "relay a message to [the Complainant]. The message is: I've been informed by HR that you may have a potential conflict with a previous employer and to please get it resolved asap." A few days later, a representative of Company A contacted EPCOR by telephone and advised that the Complainant was no longer employed by Company A.

[18] Section 1(k) of PIPA defines personal information to mean "information about an identifiable individual." From my review of the email correspondence referenced above, I find the information it contains names the Complainant, and is about the Complainant. It therefore qualifies as the Complainant's personal information under section 1(k) of PIPA. As such, the provisions of PIPA apply to EPCOR's collection, use and disclosure of this information.

[19] With regard to the Complainant's allegation that his personal information was collected, used and disclosed without consent, EPCOR submitted two arguments.

[20] First, EPCOR reported that it ...

... did not obtain the consent of the complainant relative to the collection, use and disclosure of the complainant's personal information in question. The information in question was personal employee information pursuant to section 1(j) of the PIPA as the complainant was an employee at the time. The information was collected, used and disclosed for the purpose of managing and terminating the employment relationship.

[21] Secondly, EPCOR argued that it was ...

... conducting an investigation, as defined in section 1(f), into an alleged breach on [sic] an agreement which may have occurred and it was reasonable to do so. Pursuant to sections 14(d), 17(d), 20(m) no consent for the collection, use and disclosure of the information was required as a result.

[22] In considering EPCOR's first argument – that the Complainant's personal information was also personal employee information – I turned to section 1(j) of PIPA, which defines "personal employee information" as follows:

1(j) "personal employee information" means, 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 ...

between the organization and the individual but does not include personal information about the individual that is unrelated to that relationship;

[23] In this case, the Complainant was an employee of EPCOR. The information that was collected in the first instance by EPCOR indicated that the Complainant was about to begin employment with another company. The second collection (in response to EPCOR's request to Company A for information) indirectly verified that the Complainant was employed by Company A. The personal information that EPCOR disclosed to Company A in requesting verification was for the purpose of ascertaining whether or not the Complainant was employed by Company A.

[24] EPCOR reported that the collection, use and disclosure of the Complainant's personal employee information was for the purpose of "managing the employment relationship." *Information Sheet 5: Personal Employee Information*, produced by Alberta Government Services, Access and Privacy Branch, provides some guidance as to what "managing an employment relationship" means, stating that it is "the carrying out of that part of human resource management that relates to the duties and responsibilities of employees."¹ Section 3 of the *Personal Information Protection Act Regulation*, states that "managing" also includes "administering" - defined in *Information Sheet 5* to include activities such as "classification and compensation, training and development, succession planning, and administering a benefits program." To my mind, managing/administering the employment relationship would also include activities such as ensuring compliance with corporate policies.

[25] In this case, information came to the attention of EPCOR that an employee on a leave of absence may have been working for another company. I am persuaded that the collection and use of this information by EPCOR was reasonably required to manage the Complainant's employment relationship with EPCOR. Specifically, EPCOR's Employee Ethics Policy provides rules and guidelines for such matters as secondary employment. EPCOR believed the Complainant was on a leave of absence from work for the purpose of "life changing events, opportunity to travel." Upon receiving information that this might not be the case, and that the Complainant might instead be working for another company, it was reasonable for EPCOR to collect, use and disclose information in order to determine whether or not the Complainant was in violation of corporate policies (the Ethics policy). Information that an employee may have been working for another company while ostensibly on a leave of absence is information that is directly related to the employment relationship between EPCOR and that individual. As such, I find that the Complainant's personal information collected, used and disclosed by EPCOR qualifies as personal employee information under section 1(j) of PIPA.

[26] Given this finding, sections 15, 18 and 21 of PIPA apply. These sections respectively address collection, use and disclosure of personal employee information. Section 15 reads as follows:

15(1) Notwithstanding anything in this Act other than subsection (2), an organization may collect personal employee information about an individual without the consent of the individual if

¹ Available online at <http://www.psp.gov.ab.ca/index.cfm?page=resources/PerEmployeeInfo.html>.

(a) the individual is an employee of the organization

(2) An organization shall not collect personal information about an individual under subsection (1) without the consent of the individual unless

(a) the collection is reasonable for the purposes for which the information is being collected,

(b) the information consists only of information that is related to the employment or volunteer work relationship of the individual, and

(c) in the case of an individual who is an employee of the organization, the organization has, before collecting the information, provided the individual with reasonable notification that the information is going to be collected and of the purposes for which the information is going to be collected.

[27] Sections 18 and 21 read the same as section 15, but respectively address use and disclosure of personal information. Pursuant to sections 15(2), 18(2) and 21(2), an organization can only collect, use and disclose personal employee information without consent if:

- the collection, use or disclosure is reasonable for the purpose,
- the information consists only of information related to the employment relationship, and
- before collecting, using or disclosing the information, the organization notifies the individual that the information will be collected, used and/or disclosed and the purposes for doing so.

[28] I have already stated my opinion that EPCOR's collection, use and disclosure of the Complainant's personal information was reasonably required for purposes of managing the employment relationship. Further, the personal information that was collected, used and disclosed consisted only of information related to the Complainant's employment relationship with EPCOR. That is, the Complainant's possible employment with Company A was directly related to the Complainant's employment relationship with EPCOR.

[29] With respect to notification, EPCOR provided me with a copy of a Standard Consent Form that all employees are required to review and sign at the time of hire. This document states:

EPCOR will collect Personal Information necessary to maintain the employment relationship with employees, including for the following purposes: ...

To manage the Employee Disciplinary Process, investigation of incidents/complaints, documenting the infraction, circumstances considered to lessen/aggravate the disciplinary action, disciplinary action applied, other corrective action taken, and consequences of future occurrences.

[30] The Complainant signed this consent form in January 2006 upon accepting employment with EPCOR.

[31] Accordingly, I find that the Complainant was notified by EPCOR that his personal information could be collected, used or disclosed for investigation purposes, including investigations of a possible contravention of the employment agreement.

[32] As EPCOR has met the requirements under sections 15(2), 18(2) and 21(2) of PIPA, I find that EPCOR was authorized to collect, use and disclose the Complainant's personal employee information without consent.

[33] Despite this finding, I also considered EPCOR's argument that the Complainant's personal information was collected, used and disclosed for the purposes of conducting an investigation and consent was not required pursuant to sections 14(d), 17(d) and 20(m) of PIPA. Section 14(d) reads as follows:

14 An organization may collect personal information about an individual without the consent of that individual but only if one or more of the following are applicable: ...

(d) the collection of the information is reasonable for the purposes of an investigation or a legal proceeding;

[34] Sections 17(d) and 20(m) read the same as section 14(d), but respectively authorize the use and disclosure of personal information without consent where reasonable for the purposes of an investigation or legal proceeding.

[35] "Investigation" is defined in section 1(f) of PIPA as follows:

1(f) "investigation" means an investigation related to

(i) a breach of agreement,

(ii) a contravention of an enactment of Alberta or Canada or of another province of Canada, or

(iii) circumstances or conduct that may result in a remedy or relief being available at law,

if the breach, contravention, circumstances or conduct in question has or may have occurred or is likely to occur and it is reasonable to conduct an investigation;

[36] EPCOR reported that the Complainant's personal information was collected, used and disclosed for the purpose of investigating an alleged breach of his employment agreement with EPCOR.

[37] *Information Sheet 2: Investigations*, produced by Alberta Government Services, Access and Privacy Branch,² provides some guidance in this matter and states that:

The term *investigation* generally refers to a systematic process of examination, inquiry and observation. ...

² Available online at <http://www.psp.gov.ab.ca/index.cfm?page=resources/Investigations.html>.

An *agreement* exists when two or more persons together express a common understanding of the rights and duties between them. This could refer to an apartment or equipment lease or an employment contract. An "agreement" does not include a policy that is not expressly included in the agreement.

A *breach of an agreement* means not fulfilling the agreement or not complying with the terms of the agreement.

[38] I reviewed the Offer of Employment that the Complainant signed when he accepted employment with EPCOR. The terms and conditions of that offer state that ...

... you will be required to comply with all company policies and procedures governing confidentiality, employee ethics, code of conduct, privacy and any other approved policies and procedures as established within the company (my emphasis).

[39] As noted above, EPCOR's Employee Ethics Policy provides rules and guidelines for such matters as secondary employment. The Complainant signed the Offer of Employment in January 2006 indicating that he accepted the offer and the terms and conditions outlined in it.

[40] Given this, it is clear to me that the Complainant entered into an employment agreement with EPCOR in which he agreed to abide by the company's Employee Ethics Policy. When EPCOR received information suggesting that the Complainant might have accepted employment with another company while on a leave of absence from work, EPCOR made a decision to investigate whether the information was in fact true and, if so, whether the Complainant's actions constituted a contravention of the Employee Ethics Policy and subsequently a violation of the Complainant's employment agreement with EPCOR.

[40] My review of email correspondence submitted by EPCOR supports the claim that an investigation was underway. In the Manager's request to Company A for information verifying the Complainant's employment, he specifically stated he was "investigating an issue with our HR dept." When the Manager reported his findings back to the HR Consultant, he asked "Do you wish to continue to investigate this further?"

[42] I also considered that the Complainant "chose not to disclose any information" when he received a telephone call from his EPCOR supervisor inquiring about the Complainant's "employment status elsewhere." Given this, I believe it was reasonable for EPCOR to conduct the investigation in the circumstances, having already tried to verify with the Complainant whether or not the contents of the email string were true.

[43] Accordingly, I find that EPCOR's collection, use and disclosure of the Complainant's personal information was reasonable for purposes of an investigation and, as such, consent was not required pursuant to sections 14(d), 17(d) and 20(m) of PIPA.

2. Did EPCOR disclose inaccurate personal information about the Complainant?

[44] The Complainant alleged that EPCOR, in contacting Company A, “disclosed my personal information and made unfounded claims of conflict(s) of interest.” The Complainant believes EPCOR may have contravened section 33 of PIPA, which states:

33 An organization must make a reasonable effort to ensure that any personal information collected, used or disclosed by or on behalf of an organization is accurate and complete.

[44] As noted above, I reviewed the email sent by EPCOR to Company A which disclosed some personal information of the Complainant. The personal information stated that:

- EPCOR was investigating an issue regarding “an EPCOR employee that is alleged to be also working in contract [sic] position with [Company A]”
- the Complainant “started a LOA from EPCOR on the grounds of going travelling”
- “It has since been alleged that instead of travelling, on [date] he started a position as an independent contractor with [Company A] performing [specific duties].”

[46] Considering the contents of the email, in my opinion, EPCOR made a reasonable effort to ensure that the personal information of the Complainant contained in the email was accurate and complete. The Manager who sent the email had indeed been asked to investigate an allegation that the Complainant was working for Company A. The Complainant’s Leave of Absence request stated the purpose for the leave was for “life changing events, opportunity to travel.” EPCOR did receive information suggesting that instead of travelling, the Complainant was in fact working for Company A. The email twice states that EPCOR is investigating an “allegation” about the Complainant – not that the Complainant was in fact in a conflict of interest situation.

[47] Accordingly, I find that there is no evidence that EPCOR failed to make reasonable efforts to ensure that the Complainant’s personal information was accurate and complete. To the contrary, I find the information disclosed in the email was factual and clear that EPCOR was investigating an “allegation.”

3. Did EPCOR make reasonable security arrangements to protect the Complainant’s personal information from unauthorized access?

[48] The Complainant alleged that the EPCOR Manager “operated ... completely out of the context of his ... role” in contacting Company A regarding the Complainant’s employment there. In so doing, he stated that EPCOR contravened section 34 of PIPA, which states:

34 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.

[49] EPCOR responded to the Complainant’s allegation by reporting that the department the Manager works for ...

... does most of our investigations into allegations of wrong-doing whether it be theft of time or property, misuse of EPCOR systems and equipment, vandalism, fraud or other forms of dishonesty. ... It is standard practice at EPCOR to direct investigations be carried out by ..[those] who has [sic] expertise and training in conducting investigations that neither our managers nor HR poses [sic]. All information obtained through the investigation process is maintained confidential ... and is only shared with the individual whom initiated the investigation.

[50] I reviewed EPCOR's Security Roles and Responsibilities policy. This document includes a section on "Internal Investigations," and states that Corporate Security (which includes IT Security) ...

... shall perform investigations of incidents, allegations or circumstances which relate to the internal security of the Corporation and affect its personnel, property, facilities or proprietary interests. Incident investigations are conducted to ascertain factual information required by management to take disciplinary action, correct systemic deficiencies, ensure compliance with company codes of conduct, ensure regulatory compliance and otherwise discharge its obligations to shareholders.

Incident investigations will be initiated at the direction of the Manager, Corporate Security or the Manager Information Technology Security upon the receipt of information, which requires investigation, or upon the receipt of a request for investigative services from a business unit or corporate department.

[51] Given the above, I find there is no evidence that EPCOR failed to make reasonable security arrangements to protect the Complainant's personal information from unauthorized access. The EPCOR Manager (who conducted the investigation) received an unsolicited email, which he forwarded to an EPCOR HR Consultant. It was at the request of this HR Consultant that the Manager conducted the investigation; he did not contact Company A on his own initiative.

[52] Further, I have already found that it was reasonable for EPCOR to conduct an investigation in the circumstances. Given this, I note that it is not within this Office's jurisdiction to advise organizations as to which staff or department must conduct the investigation. EPCOR's HR Consultant had the authority to direct that an investigation be conducted, and to appoint someone to make inquiries. Investigations "to ascertain factual information required by management to take disciplinary action, correct systemic deficiencies, [and] ensure compliance with company codes of conduct" are within the scope of duties performed by the Manager as per the EPCOR Security Roles and Responsibilities policy. The policy also states that "If an internal investigation is undertaken, confidentiality shall be observed. Investigations shall be conducted with due regard to any relevant Human Rights, Privacy, Freedom of Information and labour relations legislation."

[53] Accordingly, I find that there is no evidence that EPCOR contravened section 34 of PIPA by failing to make reasonable security arrangements to protect the Complainant's personal information from unauthorized access.

VI. RECOMMENDATIONS AND CONCLUSION

[54] My findings in this matter are summarized as follows:

- Pursuant to sections 15, 18 and 21 of PIPA, EPCOR was authorized to collect, use and disclose the Complainant's personal employee information without consent.
- EPCOR's collection, use and disclosure of the Complainant's personal information was reasonable for purposes of an investigation and, as such, consent was not required pursuant to sections 14(d), 17(d) and 20(m) of PIPA.
- There is no evidence that EPCOR contravened section 33 of PIPA by failing to make reasonable efforts to ensure that the Complainant's personal information was accurate and complete.
- There is no evidence that EPCOR contravened section 34 of PIPA by failing to make reasonable security arrangements to protect the Complainant's personal information from unauthorized access.

[55] I have no recommendations to make to EPCOR.

[56] I now consider this matter resolved and have closed my file.

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