

ALBERTA
OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

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

August 27, 2008

Empire Ballroom (1208558 Alberta Ltd.)

Investigation Report P2008-IR-005

I. INTRODUCTION

[1] An individual (“the Complainant”) was employed by 1208558 Alberta Ltd. (“Empire Ballroom” or “the Organization”), a nightclub in Edmonton. She was advised that the Organization was introducing a thumbprint sign-in system to track employee shift arrival and departure times. She refused to provide her thumbprint to register in the biometric sign-in system alleging that collection of her thumbprint is highly intrusive and Empire Ballroom failed to advise her of the purposes for the collection, how the information would be used, disclosed, safeguarded and how long it would be retained. The Complainant further alleges that as a result of her refusal to submit her thumbprint, her employment was terminated.

[2] In response to this complaint, the Information and Privacy Commissioner (“the Commissioner”) elected to conduct an investigation to determine whether the Organization’s activities represented a contravention of Alberta’s *Personal Information Protection Act* (“PIPA” or “the Act”).

II. JURISDICTION

[3] PIPA applies to provincially-regulated private sector organizations operating in Alberta, including Empire Ballroom. PIPA sets out the provisions under which organizations may *collect, use, or disclose* personal information.

[4] Section 36 of the Act empowers the Commissioner to conduct investigations to ensure compliance with any provision of PIPA and make recommendations to organizations regarding their obligations.

[5] The Commissioner has jurisdiction in this case because 1208558 Alberta Ltd. is an “organization”, as defined in section 1(i) of the Act, and operates in Alberta.

[6] Pursuant to section 49 of PIPA, the Commissioner authorized me to investigate this matter. This report outlines my findings and recommendations, which may be made public according to section 38(6) of the Act.

III. BACKGROUND & INVESTIGATION

[7] For the purposes of this investigation, I reviewed the Complainant’s submission and the Organization’s written response to the allegations and consulted with both for clarification. I communicated with the vendor for the thumbprint scanner, the software manufacturer, and the manufacturer of the template processor used in the software package. I also interviewed five other employees of Empire Ballroom.

Complaint

[8] The Complainant in this matter states she first began employment with Empire Ballroom in January 2007 and was terminated on March 7, 2008. In December 2007 she was advised that Empire Ballroom would be implementing a biometric sign-in system requiring all employees to submit their thumbprints. The Complainant maintains that she was concerned because when she asked, she was not advised of the purpose for collecting the information, how it would be used, disclosed, retained and protected. The Complainant also requested the Organization’s privacy policy and alleges that she was informed, “You work for me, I am your privacy policy.” She argues that Empire Ballroom’s refusal to provide her with its privacy policy is in contravention of PIPA.

[9] According to the Complainant, in March 2008 employees were again notified at a staff meeting that the biometric sign-in system would be operational that week. When the Complainant attended her shift two days later, she refused to submit her thumbprint based on her concerns that the Organization’s activities were contrary to the Act. Mid-way through that evening’s shift, the Complainant maintains that the manager and part owner pointed to her, told her to leave immediately, and said that he never wanted to see her again. The Complainant contends that she was terminated as a result of her refusal to submit her thumbprint. She states the Organization failed to explain the purposes for the collection of her thumbprint, how it would be used, disclosed or retained and argues that fingerprints are highly sensitive personal information and Empire Ballroom’s collection is intrusive and unnecessary. She argues that the Act prevents organizations from taking adverse employment action against an individual based on a refusal to do anything contrary to PIPA.

Response to Complaint

[10] Empire Ballroom is a nightclub located in West Edmonton Mall with a capacity of 1,500 that employs anywhere between 50 and 65 people. In March 2008, the Organization adopted a biometric sign-in system to monitor employee attendance for payroll purposes. The Organization maintains that its previous sign-in system, a time card/punch clock machine, permitted employees to access each other's time cards and punch in other employees who were absent or late. To address this problem, the Organization asked employees to have their punched time cards initialed by the manager, but this proved to be onerous and ineffective. The new thumb scanner system, according to Empire Ballroom, is more accurate, efficient and secure.

[11] The Organization submits that the thumbprint sign-in system does not collect thumbprints or any personal information at all. Instead, the system extracts attributes from a person's live thumbprint to create a unique number for each employee used later to recognize employees when they sign in by scanning their thumbs each time thereafter.

[12] According to Empire Ballroom, employees were verbally advised of implementation of the new system and how it works during a staff meeting, as well as individually on nights when they were working. The process is also explained to new employees at the time of hire. The information is used only to track employee shifts for payroll purposes. Thumbprint data is not disclosed to any other party and is secured through one-way hashing, encryption and password protection on a computer in the office. Only managers at the Organization have access to the system.

[13] The Organization presented a copy of its privacy policy in response to this investigation and asserts that the Complainant was not terminated; rather, she simply stopped showing up for work.

IV. ISSUES

[14] The issues to be examined in the remainder of this report are as follows:

- a) Is the information at issue "personal information", as defined in section 1(k) of PIPA?
- b) Is the information at issue "personal employee information" as defined in section 1(j) of PIPA?
- c) Are the Organization's collection and use activities in compliance with sections 15 and 18 of PIPA?
- d) Did the Organization provide the Complainant with information about its policies, in compliance with section 6(b) of PIPA?
- e) Did the Organization take adverse employment action against the Complainant, contrary to section 58 of PIPA?

V. ANALYSIS

a) Is the information at issue “personal information”, as defined in section 1(k) of PIPA?

[15] Personal information is broadly defined in section 1(k) of the Act as “information about an identifiable individual”. The Complainant in this matter reports that the Organization sought to collect her thumbprint, which is her personal information.

[16] Empire Ballroom argues that the Organization does not collect thumbprints. Rather than capturing an actual image of the thumbprint, the technology used scans a 40-bit digital *representation* of employees’ thumbprints. Therefore, the Organization does not collect, have custody of, nor can it reproduce employees’ thumbprints at any time.

[17] In researching the software product used by Empire Ballroom, I determined that traditional biometric comparison technology is not used. Earlier technology for biometric identification would use a live biometric or copy to compare with stored samples. In other words, a person’s thumbprint would be examined and compared with thumbprints already on file to find a match. A match would identify the person in question. This is the system used by police wherein actual fingerprints are compared to each other.

[18] The specific technology used by Empire Ballroom first enrolls employees by having them place their thumbs on the sensor or reader window. The reader extracts unique attributes from the person’s thumbprint such as distinct marks, pores, the distance between ridges, density, and other measurements. As this digital representation of the employees’ thumbprint is captured, it is converted or translated into a binary file; a unique number that identifies that individual called a thumbprint “template”. The template information is a hash¹ that cannot be reverse engineered or reconstructed into an image of the thumbprint. The template is then encrypted and stored in Empire Ballroom’s database, which is password protected. Ultimately, the data in the Organization’s custody is a unique number, not the image of a thumbprint.

[19] Once employees have been registered in the system, they scan their thumbs on the reader window to sign in for their shifts. The system analyzes the live thumbprint presented, translates it into a numeric template, as described above, and compares it with numeric thumbprint templates already stored on file. Once there is a match, the employee has been authenticated and is signed in for the shift. The system records the date and time of sign in and out similar to a punch card system.

¹ A hash function is an algorithm that transforms a string of numbers into another, new value of a fixed length or a key that represents the original value. It is virtually impossible to convert the hash value or short bit string back into the original identification number. A hash value is unique in the sense that two numbers could not result in the same “bit string” hash value, and any attempt to make changes to the number would negate the value.

[20] I am satisfied that Empire Ballroom is not collecting thumbprint images and is instead collecting unique numeric identifiers that represent thumbprints. These are also referred to as thumbprint “scans” or templates. The data collected does not enable reproduction of thumbprints by the Organization.

[21] In this case, I am persuaded that the thumbprint template, or numeric identifier, is still “personal information” as defined by the Act. This view was established by the Privacy Commissioner of Canada who noted in PIPEDA Case Summary #349 that, “the individual must be ‘identifiable’, not necessarily identified.” This is consistent with the federal Commissioner’s earlier determination in PIPEDA Case Summary #319 that an IP address, while simply a number, can be personal information since it can be linked with and identify an individual. In other words, if it is possible for a person to ascertain the identity of an individual from the information, the information is personal information.

[22] In *Gordon v. Canada (Minister of Health)*, 2008 FC 258, the Federal Court expressed the same approach, stating with respect to personal information under the *Privacy Act*:

33 *Thus, information recorded in any form is information "about" a particular individual if it "permits" or "leads" to the possible identification of the individual, whether alone or when combined with information from sources "otherwise available" including sources publicly available.*

Similarly, according to the Access and Privacy Branch of Service Alberta, personal information:

... means either the information readily identifies the individual or the identity of the individual can be determined from the contents of the information. If it is possible for a third party to determine the identity of an individual from the contents of the information, that information is personal information for the purposes of the Act [Information Sheet 3: Personal Information].

[23] In the present case, Empire Ballroom uses the numeric identifier representing the thumbprint to identify and track specific employees. The numeric identifier is associated or linked with each employee’s name in its computer. I find that the information is therefore personal information, as defined by PIPA, and falls under the purview of the Commissioner.

[24] In Investigation Report F2008-IR-001 issued by this Office, the investigator also found that numeric identifiers derived from handprint scans met the definition of personal information under the *Freedom of Information and Protection of Privacy Act*. Similarly, the Privacy Commissioner of Canada considered a numeric representation of a voiceprint, another biometric, as personal information in PIPEDA Case Summary #281.

b) Is the information at issue “personal employee information” as defined in section 1(j) of PIPA?

[25] Section 1(j) of PIPA defines a subset of personal information, known as “personal employee information,” as follows:

- (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, or*
 - (ii) *a volunteer work relationship between the organization and the individual but does not include personal information about the individual that is unrelated to that relationship;*

[26] This issue must be decided because only “personal employee information” invokes application of sections 15, 18 and 21 of the Act. These sections modify PIPA’s general requirement for consent in the employment context.

[27] According to the definition above, to be considered personal employee information the information must be:

- “reasonably required” by the organization,
- collected “solely” for the purpose of “establishing, managing or terminating” the employment relationship, and
- cannot include any information unrelated to that relationship.

[28] Employees of Empire Ballroom are required to sign employees in for their shifts for attendance tracking and payroll purposes. Attendance and payroll is a typical aspect of managing employees. Empire Ballroom advised that it originally employed a time card/punch clock system for employees to sign in and out of their shifts. However, the Organization experienced problems with employees who abused this system by punching in cards for employees not present. As a result, Empire Ballroom implemented a system whereby after punching their time cards, employees were required to have the manager initial the cards at the start and end of shifts to confirm physical attendance. This became onerous and the new system, requiring a thumbprint template, was adopted to improve accuracy, efficiency, security, and to eliminate paper tracking. The numeric identifier is therefore used for managing the employment relationship and the Organization confirmed it is not used for any other purpose.

[29] I am satisfied that the information at issue is personal employee information, as defined by section 1(j) of PIPA.

c) Are the Organization’s collection and use activities in compliance with sections 15 and 18 of PIPA?

[30] The Complainant and Organization both agree that Empire Ballroom did not obtain consent from employees to collect and use personal information. However,

PIPA has special provisions for employers such that they do not require the consent of their employees to collect, use or disclose personal employee information if the employer meets certain conditions. With respect to collection, section 15(2) of the Act states:

(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 [emphasis added].*

[31] The same provisions for use and disclosure are referenced in sections 18 and 21 of PIPA. If all conditions above are not met, the normal consent requirements of section 7(1) of PIPA apply.

[32] In terms of reasonable purpose, Empire Ballroom persuaded me that its collection and use of numeric identifiers representing thumbprints is reasonable for the Organization's purposes, in compliance with sections 15(2)(a) and 18(2)(a) of the Act. Attendance monitoring for payroll is a reasonable endeavour for an employer to engage in. This is consistent with the findings in Investigation Report F2008-IR-001, in which a public body implemented a hand recognition system for employee attendance tracking. Similarly, in PIPEDA Case Summary #281, the federal Commissioner accepted that an organization's collection of employees' voice biometrics for one-to-one authentication was reasonable under the particular circumstances. While Empire Ballroom previously used another method (the time card/punch clock) it was ineffective due to abuse. Having the manager sign each employee in and sign out was inefficient, and the biometric sign-in system is a paperless system that yields more accurate arrival and departure information that is far more difficult to dispute. The system is also more secure in that employees are unable to access each other's personal information. In terms of this finding, it is significant that Empire Ballroom does not collect actual thumbprints. Were that the case, my findings might be different.

[33] I am also satisfied that the information collected and used by Empire Ballroom consists only of information related to the employment relationship, in fulfillment of sections 15(2)(b) and 18(2)(b) of PIPA. Again, the Organization does not collect actual images of thumbprints, and thumbprints cannot be reconstructed based on numeric template data. The other personal information associated with the numeric identifier is the employee's name, address, telephone number, social insurance number, pay rate, shift times, and security level. This information is all related to managing the employment relationship.

[34] The final requirement of sections 15(2) and 18(2) of PIPA is that employees be notified that the information will be collected and used and the purpose for doing so. The Organization submitted that:

all old employees were informed of the switch over of systems at a group staff meeting as well as individually on nights when they were working. All new employees have the process explained to them on hire.

The Complainant argues that she was not told: why Empire Ballroom was collecting the information; how it would be used; how and when the information would be disclosed; for how long the information was going to be retained, and how the information would be secured.

[35] I note that an employer is not obligated to advise an employee how information will be secured, how long it will be retained, and even how and when the information will be disclosed, if disclosure has not yet been contemplated. In fact, Empire Ballroom does not disclose the numeric identifier to anyone, including the system developers, and therefore only has a duty to notify employees in advance of a disclosure of personal employee information that will take place. An organization is, however, required to provide policy information to an individual on request, as will be discussed.

[36] The Complainant reports that on December 7, 2007 she was informed “that the Empire Ballroom would be implementing a biometric *sign-in system* at their establishment [emphasis added]” and she would therefore be required to submit her thumbprint. She also acknowledges that on March 5, 2008 at a staff meeting, the issue was raised again and employees were advised implementation would begin on March 7, 2008. Finally, in support of concerns about the unreasonableness of the thumbprint system, the Complainant submits that:

Empire Ballroom previously used a system whereby each individual employee had to go and see a manager at the beginning of each shift and end of each shift in order to be signed in and out, this allowed for identification of the individual employee attending each shift

[37] In my view, the Complainant’s own version of events acknowledges that she was notified of the purposes for the collection and use of her personal information. That is to say, the new system was being introduced to replace the old sign-in system understood to track employee shifts.

[38] Despite my opinion that the Complainant was properly notified of the *purposes* for collecting and using her personal information, I still find that Empire Ballroom did not adhere to the full requirements of sections 15(2)(c) and 18(2)(c) by failing to properly explain precisely *what* personal information was being collected and used for the purposes specified. The Complainant was very clearly under the impression that the Organization sought to collect her thumbprint and it was obvious to me that she was unaware that the information actually being collected by Empire Ballroom was a numeric identifier representing her thumbprint attributes.

[39] I take the view that the requirements of sections 15(2)(c) and 18(2)(c) of PIPA place a duty on organizations to specify *what* personal information is being collected and used in addition to the purpose for the activity. It cannot be said that individuals have been properly notified that their personal information will be collected or used for a particular purpose without knowing what the information is. It is insufficient for an organization to notify individuals that *something* about them will be collected and used. Section 15(2)(c) states, in part, that an organization must have,

*...before collecting the information, provided the individual with reasonable notification that **the information** is going to be collected...*

[40] Notification must therefore include a description of what “the information” at issue is. This understanding is consistent with the consent requirements of section 7(1) which requires the following:

7(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**...*

[41] In the case of consent, an individual can only make a meaningful decision about his or her privacy if it is understood what information is at issue. Consent otherwise would be meaningless and the intention of the Act would not be achieved. Whereas an individual may be willing to consent to the collection of their blood type from a blood sample, they may be unwilling to consent to collection of DNA from the same blood sample, even though the purposes for collection may be the same. Specificity is therefore essential. This is even more important for employers, since the normal consent requirements are reduced for personal employee information. Employers therefore have a heightened responsibility to be open and transparent about their practices as they relate to employees in order to respect privacy principles intended to provide individuals with greater control over their personal information.

[42] In support of her arguments against the Organization’s practices, the Complainant described the sensitivity of fingerprints and the intrusiveness of collecting them. When I asked the Complainant, through her counsel, what type of scanning system had been adopted by the Organization and whether actual thumbprints were being collected as opposed to a numeric representations of thumbprint attributes, she was unaware that any such distinction existed.

[43] The Organization argued that it adequately made the distinction and explained to employees how the technology works at its March 2008 staff meeting and one-on-one during each employee’s shifts. According to Empire Ballroom, employees were advised that the system “map[s] the points on their thumbs and mak[es] a number from it”.

[44] In light of this conflicting version of events about notification of what information would be collected and used for the biometric sign-in system, I randomly selected several Empire Ballroom employees and was able to interview six of them. Five of these employees were in attendance at the March 5, 2008 staff meeting with the Complainant. When asked to explain what employees were advised about the biometric sign-in system, none of the six employees could offer specific information other than that they were informed their thumbs would be scanned to sign in and out of shifts. One employee indicated that during the meeting, the manager stated he did not have the technical expertise to understand or explain how the system works. None of the six employees could definitively state whether or not the system collects their actual thumbprints or not, nor whether they know if their employer has custody of their thumbprints. One employee stated she was not told whether the system does or does not collect thumbprints, four stated that they assume the system must collect their thumbprints, and the fifth initially stated she believes it does, but then stated she is not certain.

[45] Based on this information, I was satisfied that the Complainant was not adequately notified about what personal information the Organization sought to collect and use. It was clear that neither she nor any of the employees I spoke to have an understanding of what personal information their employer collects and uses for this system. Given that the Complainant was not notified about *what* personal information would be collected and used by Empire Ballroom, I find that the full requirements of sections 15(2) and 18(2) were not met, which would have authorized Empire Ballroom to collect and use the Complainant's numeric thumbprint representation without consent. Instead, consent was required, but not obtained.

[46] Of course, the Complainant did not submit her thumbprint template to the Organization and refused to enroll in the biometric sign-in system. Thus, the Organization did not, in terms of the Complainant, contravene sections 7(1)(a) and (c) of PIPA by failing to obtain consent to collect and use her personal information since no personal information was collected from her.

d) Did the Organization provide the Complainant with policy information, in compliance with section 6(b) of PIPA?

[47] Section 6 of PIPA requires that:

- 6** *An organization must*
 - (a) *develop and follow policies and practices that are reasonable for the organization to meet its obligations under this Act, and*
 - (b) *make information about the policies and practices referred to in clause (a) available on request.*

[48] The Complainant claims she requested Empire Ballroom's privacy policy and was not given a copy, but was instead told by her employer "You work for me, I am your privacy policy." She suggests that the Organization did not have a policy. The

Organization produced its privacy policy in response to my request for it and asserted that it has been in place since Empire Ballroom opened. I am unable to determine whether the Organization's privacy policy was in place before, or whether it was adopted when this investigation was initiated.

[49] Section 6(b) of PIPA does not require that organizations provide an actual copy of its privacy policy in response to a request. Rather, the Act requires that *information* about the organization's policies and practices be made available. I would add that as a best practice, organizations ought to make their actual written policies available for clarity, accountability, and transparency; most do.

[50] Given that the Complainant objected to utilizing the biometric sign-in system and expressed concerns and questions to Empire Ballroom (which were overheard by one of the employees I spoke with) about its collection, use, disclosure, protection and retention practices for her thumbprints, it is clear she required some additional information from her employer. The Complainant states no policy information was given to her, and Empire Ballroom could not offer any evidence to suggest the opposite occurred. I therefore find that the Organization's actions were contrary to section 6(b) of PIPA.

e) Did the Organization take adverse employment action against the employee, contrary to section 58 of PIPA?

[51] The Complainant maintains that she was terminated because of her refusal to provide her thumbprints to the Organization. She asserts Empire Ballroom therefore acted contrary to section 58 of PIPA, which states:

58 *An organization shall not take any adverse employment action against an employee of the organization, or deny an employee a benefit, on account of or for any reason arising out of the situation where*

- (a) the employee, acting in good faith and on the basis of reasonable belief, has disclosed to the Commissioner that the organization or any other person has contravened or is about to contravene this Act,*
- (b) the employee, acting in good faith and on the basis of reasonable belief, has done or stated an intention of doing anything that is required to be done in order to avoid having any person contravene this Act,*
- (c) the employee, acting in good faith and on the basis of reasonable belief, has refused to do or stated an intention of refusing to do anything that is in contravention of this Act, or*
- (d) the organization believes that the employee will do anything described in clause (a), (b) or (c).*

[52] Empire Ballroom refuted the claim that the Complainant was fired for her refusal to provide her thumbprint, or at all. Rather, the Organization submitted that the Complainant simply stopped coming to work after the day she refused to use the new sign-in system.

[53] Given this conflicting version of events, I requested a copy of the Complainant's Record of Employment (ROE), a form that must be submitted to

Service Canada to manage Employment Insurance. Box 16 of the ROE requires employers to indicate the reason for issuing the form. Among others, a code for “dismissal”, “quit”, and “other” exist.

[54] The code entered in box 16 of the Complainant’s ROE represents “other”, and the explanation given on the form is that she was sent home for refusing to use the Organization’s sign-in system. Furthermore, the ROE specifically states that she was not terminated and was scheduled to work, but did not show up for her shifts after this incident.

[55] The Complainant maintains that the date her ROE was completed was ten days after her counsel sent Empire Ballroom a demand letter for wrongful dismissal. Since the Organization knew the Complainant was bringing a wrongful dismissal action against her employer when the ROE was completed, it was suggested that there was motivation to complete the ROE in this way. The Complainant also states that one of her former coworkers observed that the Complainant’s name was immediately removed from the shift schedule for two weeks after the Organization advised her to leave, and then reappeared on the schedule once the demand letter had been served. Apparently, the coworker also contended that she had heard the Complainant was told to leave and never come back and stated that a replacement was hired for the Complainant the next week.

[56] The ROE neither states that the Complainant was terminated nor that she quit. Although the Complainant suggests a motivation for the way the ROE was completed, I do not have sufficient evidence to support the allegation that the Complainant was terminated. I was unable to consider the colleague’s hearsay evidence about being told by other employees that the Complainant had been terminated. I could not corroborate the information about the shift schedule, since it was no longer available, but the fact that the Complainant’s name may have been removed from the schedule is not conclusive in revealing that she was terminated, particularly if her name reappeared on the schedule. Again, the Complainant suggests a motivation for the reappearance of her name on the schedule, however, this is not sufficient evidence. Whether Empire Ballroom hired someone new suggests a staffing shortage, either because the Complainant failed to show up for work, because she was terminated or another reason.

[57] The most reliable evidence was the ROE, which is not conclusive. I also note that it is an offense to enter false information on an ROE. Given the conflicting version of events, I am unable to make a determination and make no finding in respect of section 58 of PIPA.

VI. SUMMARY & RECOMMENDATIONS

[58] In this investigation, I determined that Empire Ballroom is not collecting thumbprints. Instead, the Organization collects unique numeric identifiers which represent distinct attributes of thumbprints. This information is hashed,

encrypted and password protected. The information cannot be reconstructed to create an image of an individual's true thumbprint.

[59] I also found that the numeric identifiers representing thumbprints are considered "personal information", as defined in section 1(k) of PIPA. Furthermore, it was evident that the information - collected and used for payroll and attendance purposes - met the definition of "personal employee information" in this case. Employers are not required to obtain consent to collect, use or disclose personal employee information, provided particular conditions are met.

[60] In this case, Empire Ballroom met the requirements of sections 15(2)(a) and 18(2)(a) of the Act because its purposes for collecting and using the numeric identifiers were reasonable. Other less accurate and less secure methods had been tried and failed. The Organization also complied with sections 15(2)(b) and 18(2)(b) of the Act because its collection and use of the information was related to the employment relationship.

[61] While I was satisfied that Empire Ballroom did notify the Complainant of the *purposes* for the collection and use of information, I was not persuaded that the Organization properly explained precisely *what* information was being collected and used. That is to say, the Complainant understood that her thumbprint would be collected and used, when that was not the case. Thumbprints and thumb scans or templates are not the same. In this sense, Empire Ballroom failed to meet the requirements of sections 15(2)(c) and 18(2)(c) of PIPA which require that individuals be notified about what personal information will be collected and for what purpose.

[62] Since the Organization did not meet the full requirements of sections 15(2) and 18(2) of PIPA, consent was required to collect and use thumbprint scans. In the case of the Complainant, consent was not obtained, but since she refused to allow her thumb to be scanned, her personal information was not collected or used by the Organization. Therefore, Empire Ballroom did not contravene section 7(1)(a) and (c) of the Act which require consent prior to collection and use of personal information.

[63] The Complainant requested a copy of the Organization's privacy policy, but was not provided with it. Section 6(b) of the Act does not require Empire Ballroom to provide a copy of its policy to the Complainant. Instead, PIPA requires that policy information be made available on request. There was no evidence to suggest that the Complainant received this, contrary to section 6(b) of the Act.

[64] Finally, I was unable to make a finding under section 58 of PIPA since I was unable to determine whether the Complainant was terminated as a result of her refusal to allow the Organization to scan her thumbprint, as she claims, or whether she simply stopped showing up for work, as the Organization asserts.

[65] In response to these issues, I recommend that Empire Ballroom take the following action to rectify improper notification to employees:

1. Notify employees in writing about the mechanics of the biometric sign-in system and clarify precisely what personal information is collected and how it will be used.
2. Modify the Organization's privacy policy to include reference to the collection, use, disclosure, security and retention of thumbprint templates.
3. Provide all existing and new employees with a copy of the Organization's revised privacy policy.

[66] The Organization accepted the findings in this report and agreed to implement the recommendations. The Complainant considered her complaint under the Act to be resolved. This matter is therefore closed.

VII. CONCLUSION

[67] Any aversion toward biometrics and fingerprints in particular, is usually related to the association with criminality and law enforcement's use of this information to identify offenders. Collection of this information naturally raises concerns about privacy and dignity. However, an important distinction must be made between collection of actual biometric information used for "one-to-one *identification*" of a person, and collection of numeric representations of biometric attributes for "one-to-one *authentication*" of an individual. In the latter case, a finger, hand, voice, or facial imprint is not actually captured; instead numbers representing unique features of a biometric, from which the biometric cannot be reconstructed or reproduced, are collected.

[68] This form of biometric technology has clear benefits. It can often yield more accurate information in a more secure and efficient manner. In this sense, it may be considered by some to be a privacy-enhancing tool. However, application of this technology does not negate responsibility under privacy legislation, including proper notification to individuals. In order for individuals to make meaningful decisions about their privacy, an organization has a duty to explain precisely what personal information is being collected, used and disclosed and for what purpose. While it may be obvious what information is at issue when an organization, for example, informs customers that their personal information will be collected and used to *mail* them material, this is not the case with new technology such as biometrics, hashing, and vehicle chips. In these cases, there is an enhanced responsibility for organizations to explain not only the purposes for which personal information is being collected, but also *what* information about the individual is being collected.

Preeti Adhopia
Portfolio Officer