

**ALBERTA
OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER**

**Report of an Investigation into the
Use of Personal Information without Notice or Consent**

April 28, 2011

PIERSON'S FUNERAL SERVICE LTD.

Investigation Report #P2010-IR-002

I. INTRODUCTION

[1] The Office of the Information and Privacy Commissioner (OIPC) received a complaint alleging that Pierson's Funeral Service Ltd. (Pierson's) contravened the *Personal Information Protection Act* (PIPA or "the Act") by providing personal information of the Complainant and his deceased wife to a service provider in the United States, without consent, and without notifying the Complainant. In addition, the Complainant raised a number of concerns regarding Pierson's compliance with PIPA, including allegations that Pierson's did not have a privacy policy, and had not made reasonable security arrangements to protect personal information.

II. JURISDICTION

[2] On May 1, 2010, amendments to PIPA came into force by virtue of the *Personal Information Protection Amendment Act, 2009*. However, because the activities at issue in this complaint occurred prior to the amendments, the legislation applies as it existed previously.

[3] PIPA applies to provincially-regulated private sector organizations operating in Alberta. Pierson's is a corporation, operating in Alberta, and qualifies as an "organization" as defined in section 1(i) of PIPA.

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

[5] This report outlines the findings and recommendations from my investigation, which may be made public according to section 38(6) of the Act.

III. INVESTIGATION

[6] In conducting this investigation, I reviewed the complaint submitted by the Complainant, and Pierson's response to the Complainant's allegations. I also reviewed Pierson's privacy policy, website, and agreement with Graystone Associates, Inc. (Graystone).

[7] The Complainant reported that he used Pierson's services after his wife passed away. Within a month of his wife's passing, the Complainant received a "solicitation for information" from a company in the United States: Graystone. The Complainant was upset because he believed that Pierson's had provided personal information of himself and his wife to Graystone without his consent. He also questioned what information was provided to Graystone, and for what purpose.

[8] The Complainant raised a number of additional concerns in his complaint, which I have summarized as follows:

- Pierson's does not have a privacy policy.
- Pierson's does not "have the facilities to maintain, properly and safely store such sensitive personal, private and confidential information" as is collected from individuals that use Pierson's services.

- The length of time that Pierson’s retains personal information collected from individuals.
- The relationship between Pierson’s and its service provider, Graystone. The Complainant asked:

Does Pierson’s have a formalized agreement with Graystone which can be read to ensure what information is being shared and how Graystone is to handle, store dispose [sic] of information etc.? Does this agreement state that Graystone is absolutely not to give in whole or in part any of this information to any other party for any reason?

- Pierson’s hiring practices. The Complainant expressed concern over Pierson’s employment of certain individuals, stating ...

... I do not believe that Pierson’s or other funeral homes should be using people like [named employees] to garner such highly personal, private and confidential information. I would like to know what and how these people ... are chosen and exactly what type of agreement they enter into with funeral homes.

IV. ISSUES

[9] The issues considered in this investigation are:

1. Did Pierson’s obtain consent to use personal information of the Complainant and his deceased wife to mail a Client Satisfaction Survey?
2. Did Pierson’s notify the Complainant of the purpose(s) for which his personal information was collected, in accordance with section 13 of PIPA?
3. Does Pierson’s have a privacy policy, as required by section 6 of PIPA?
4. Does Pierson’s make reasonable security arrangements to protect personal information, as required by section 34 of PIPA?
5. Does Pierson’s comply with the retention requirements set out in section 35 of PIPA?

V. ANALYSIS

1. Did Pierson's obtain consent to use personal information of the Complainant and his deceased wife to mail a Client Satisfaction Survey?

[10] The Complainant alleges that Pierson's provided his personal information, and that of his deceased wife, to Graystone Associates, Inc. in the United States, without obtaining consent and without advising the Complainant of the purpose for which the personal information would be used.

[11] In its response to the Complainant's allegation, Pierson's advised that it has a formal agreement with Graystone, and that Graystone provides a number of services on behalf of Pierson's, including, in particular ...

... the gathering of feedback from our client families. One of tools [sic] Graystone uses in its work with funeral homes is a Client Satisfaction Survey ... This survey is mailed to every client family we serve and the valuable feedback is compiled and used as research information for our firm. ...

Graystone has never contacted a client of Pierson's Funeral Service outside of sending them a survey.

[12] With respect to information about the Complainant and his wife that was provided to Graystone, Pierson's reported that:

The information provided to Graystone Associates included the name of the deceased ... the name the [sic] next of kin ... his mailing address, as well as their relationship husband and wife. We also provided our funeral file number, the identifying number of each file we use for our file system. Graystone does not receive telephone numbers of any of our clients.

[13] "Personal information" is defined in section 1(k) of PIPA to mean "information about an identifiable individual." The information that Pierson's provided to Graystone is about the Complainant and his wife, and qualifies as personal information as defined in section 1(k) of PIPA.

[14] Section 7 of PIPA generally requires that organizations obtain consent to use personal information. Section 7 states:

7(1) Except where this Act provides otherwise, an organization shall not, with respect to personal information about an individual,

[...]

- (c) use that information unless the individual consents to the use of that information, or

[15] With respect to obtaining consent, Pierson's advised that ...

... we have a policy that every family we serve is shown a copy of the survey that will be mailed to them as well as a copy of the envelope that it will be mailed in and our funeral directors are required to explain that a survey will be forthcoming and the reasons for which it is sent. My understanding is that the funeral director that met with [the Complainant] did not show him the survey or envelop[e] and did not explain that a survey would be mailed to him.

[16] Pierson's reports that, in this case, its funeral director did not follow Pierson's general practice, and did not show the Complainant the survey or envelope, nor explain that a survey would be mailed to him. As the Complainant was not aware a survey would be mailed to him, he could not have consented to the use of his personal information for the purpose of mailing a survey. Accordingly, I find that Pierson's contravened section 7(1)(c) of PIPA when it used the personal information of the Complainant and his deceased wife without consent to mail a Customer Satisfaction Survey to the Complainant.

[17] Although not strictly within the scope of this complaint, I also considered Pierson's general practice when providing information about the Client Satisfaction Survey to individuals *vis a vis* the consent provisions in PIPA.

[18] As already noted, section 7 of PIPA generally requires organizations to obtain consent before collecting, using or disclosing personal information. Section 8 of PIPA sets out the various forms of consent that are acceptable:

8(1) An individual may give his or her consent in writing or orally to the collection, use or disclosure of personal information about the individual.

(2) An individual is deemed to consent to the collection, use or disclosure of personal information about the individual by an organization for a particular purpose if

- (a) the individual, without actually giving a consent referred to in subsection (1), voluntarily provides the information to the organization for that purpose, and

- (b) it is reasonable that a person would voluntarily provide that information.

(3) Notwithstanding section 7(1), an organization may collect, use or disclose personal information about an individual for particular purposes if

- (a) the organization
 - (i) provides the individual with a notice, in a form that the individual can reasonably be expected to understand, that the organization intends to collect, use or disclose personal information about the individual for those purposes, and
 - (ii) with respect to that notice, gives the individual a reasonable opportunity to decline or object to having his or her personal information collected, used or disclosed for those purposes,
- (b) the individual does not, within a reasonable time, give to the organization a response to that notice declining or objecting to the proposed collection, use or disclosure, and
- (c) having regard to the level of the sensitivity, if any, of the information in the circumstances, it is reasonable to collect, use or disclose the information as permitted under clauses (a) and (b).

[19] Pierson's reported that it shows each family a copy of the survey and the envelope that it will be mailed in; Pierson's did not say that individuals are asked whether or not they consent to having the survey mailed to them. Therefore, Pierson's general practice does not involve obtaining a consent as contemplated by section 8(1) of PIPA; that is, Pierson's does not obtain explicit consent, in writing or orally, to use personal information to mail the Client Satisfaction Survey.

[20] Section 8(2) of PIPA describes a form of consent that is "deemed" when an individual voluntarily provides personal information to an organization for a particular purpose.

[21] Again, Pierson's reported that families are "shown a copy of the survey that will be mailed to them as well as a copy of the envelope that it will be mailed in and our funeral directors are required to explain that a survey will be forthcoming ...".

[22] In my view, this practice does not qualify as deemed consent as contemplated by section 8(2) of PIPA. The personal information that Pierson's provides to Graystone for purposes of mailing the survey includes the name of the deceased, the name and mailing address for the next of kin, the relationship between the deceased and the next of kin, and Pierson's file number. With the exception of the file number, this is information that is provided to Pierson's for the primary purpose of obtaining funeral services; it is not voluntarily provided to Pierson's for the particular purpose of being mailed a Client Satisfaction Survey.

[23] Further, the deemed consent contemplated by section 8(2) of PIPA is based on the idea that the particular purpose for which an organization will use personal information is transparently obvious to an individual, such that

the purpose does not have to be explained. This is evidenced by section 13(4) of PIPA, which states that the requirement under PIPA to notify individuals of the purpose for which their personal information is collected [section 13(1)] does not apply when an organization collects personal information pursuant to section 8(2). In my view, if Pierson's did not explain that personal information would be used to mail a survey, it would not be transparently obvious to an individual that their information would be used for this purpose.

[24] Finally, I am also of the view that Pierson's cannot rely on the consent described in section 8(3) of PIPA to use personal information to mail the survey. Section 8(3) authorizes an organization to collect, use and disclose personal information for particular purposes, provided:

- the organization notifies the individual that it will collect, use or disclose the information for those purposes,
- the organization gives the individual a reasonable opportunity to decline or object to the collection, use or disclosure,
- the individual does not decline or object, and
- the organization has considered the sensitivity of the information and the relevant circumstances and it is reasonable to collect, use or disclose the information.

[25] Pierson's reported that its general practice is to show the family a copy of the survey and the envelope it will be mailed in, and explain that a survey will be mailed; in my view, this qualifies as notifying an individual that Pierson's will use personal information to mail a survey, and so the first criterion set out in section 8(3)(a)(i) of PIPA has been met.

[26] Pierson's did not explicitly state that an individual is given the option to decline or object to the use of his or her personal information for purposes of mailing a survey, as required by sections 8(3)(a)(ii) and 8(3)(b); however, for purposes of this discussion I assume this would be the case.

[27] Nonetheless, in my view, the determining factor is that section 8(3)(c) of PIPA specifically requires that an organization consider the sensitivity of the personal information and the circumstances in which it is collected, used or disclosed, when relying on this form of consent.

[28] While the information that Pierson's uses to mail the Client Satisfaction Survey is not, objectively speaking, particularly sensitive information, in my view the circumstances in which the information is collected are such that relying on this form of consent is not reasonable. The information is typically collected during a difficult and emotional time; in these circumstances, an individual might not fully understand that he or she has the option of refusing to consent to the use of personal information to mail a survey, and/or may not

feel comfortable declining or objecting to the practice. For these reasons, I find that the form of consent outlined in section 8(3) of PIPA would not be reasonable in these circumstances.

[29] Given my findings above – that Pierson’s general practice does not appear to meet the consent requirements set out in PIPA – I have made some recommendations to Pierson’s with respect to obtaining consent. These recommendations are set out towards the end of this investigation report.

2. Did Pierson’s notify the Complainant of the purpose(s) for which his personal information was collected, in accordance with section 13 of PIPA?

[30] Section 13 of PIPA states:

13(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.

[31] Pierson’s reported that ...

... we have a policy that every family we serve is shown a copy of the survey that will be mailed to them as well as a copy of the envelope that it will be mailed in and our funeral directors are required to explain that a survey will be forthcoming and the reasons for which it is sent. My understanding is that the funeral director that met with [the Complainant] did not show him the survey or envelop[e] and did not explain that a survey would be mailed to him.

[32] I am satisfied that Pierson’s general practice meets the requirements of section 13 of PIPA; that is, Pierson’s reports that its “funeral directors are required to explain that a survey will be forthcoming and the reasons for which it is sent.” Presumably, the funeral director is also able to answer the individual’s questions about the collection.

[33] With respect to the specific complaint before this Office, however, I find that Pierson’s contravened section 13 of PIPA. Pierson’s reported that the funeral director that met with the Complainant did not show him the survey or envelope, and did not explain that a survey would be mailed to him. As a result, the Complainant was not expecting to receive the Client Satisfaction Survey in the mail.

3. Does Pierson’s have a privacy policy, as required by section 6 of PIPA?

[34] Section 6 of PIPA states:

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.

[35] The Complainant alleges that Pierson’s does not have a privacy policy.

[36] Pierson’s responded that its privacy policy has been available on its website for more than 3 years, and “clearly dictates how and why we use the information we gather.” Pierson’s provided a copy of its privacy policy with its response to the Complainant’s allegations; I also reviewed the privacy policy on Pierson’s website during my investigation.

[37] As Pierson’s has developed a policy, and makes that policy publicly available on its website, I find that Pierson’s has complied with section 6 of PIPA. After reviewing the policy, however, I noted that it does not specify what personal information is collected from individuals, nor does it include any statement of purpose that could reasonably be expected to inform an individual about Pierson’s Client Satisfaction Survey. I have made some recommendations to Pierson’s for addressing these concerns, which are included at the end of this investigation report.

4. Does Pierson’s make reasonable security arrangements to protect personal information, as required by section 34 of PIPA?

[38] Section 34 of PIPA addresses the protection of personal information and 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.

[39] As noted above, the Complainant raised a number of concerns related to the protection of personal information in Pierson’s custody and control. These concerns are addressed below.

Onsite security

[40] The Complainant alleged that Pierson’s does not “have the facilities to maintain, properly and safely store such sensitive personal, private and

confidential information” as is collected from individuals using Pierson’s services.

[41] With regard to its security arrangements, Pierson’s reported that it ...

... has typical business security with locks and an active security system which is activated and inactivated each time the building is entered and vacated. While the building is occupied, staff are always in the offices which have person [sic] and private information. Staff are carefully screened when hired and confidentiality and privacy are part of our ongoing staff training. The staff that uses the files with personal information are licensed funeral directors who undergo rigorous training and screening. Licensed Funeral Directors understand the importance of privacy and confidentiality as these topics are taught extensively in the programs used to license these professionals. We have a limited number of unlicensed staff who have access to the files including office support staff and funeral attendants who are trained by Pierson’s in determining which information may be deemed public and which information must remain confidential. We have full confidence that our cleaning and maintenance staff do not access files. Although this policy has been in place since our inception as a company, it is not in writing.

[42] I note that the Complainant has not alleged any specific failure on Pierson’s part to make reasonable security arrangements (with the exception of Pierson’s security in contracting, discussed below), but instead has raised a general concern that Pierson’s does not “have the facilities to maintain, properly and safely store such sensitive personal, private and confidential information.”

[43] Given that there is no allegation of a specific failure, and considering Pierson’s response, I am satisfied that Pierson’s is aware of its legal responsibility to protect personal information in its custody, and I find no evidence that Pierson’s is in contravention of section 34 of PIPA.

Service contract

[44] The Complainant questioned the relationship between Pierson’s and its service provider, Graystone, asking:

Does Pierson’s have a formalized agreement with Graystone which can be read to ensure what information is being shared and how Graystone is to handle, store dispose [sic] of information etc.? Does this agreement state that Graystone is absolutely not to give in whole or in part any of this information to any other party for any reason?

[45] Section 5 of PIPA deals with accountability, and states:

5(1) An organization is responsible for personal information that is in its custody or under its control.

(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.

[46] Pursuant to section 5(2), where Pierson's engages Graystone to provide services on its behalf that involve the collection, use or disclosure of personal information, Pierson's is responsible to ensure Graystone complies with PIPA.

[47] Pierson's advised that it does have a written agreement with Graystone, and provided a copy of that agreement for my review. According to the agreement, Graystone provides a number of services to Pierson's, and on behalf of Pierson's. Some of these services necessarily involve the collection, use and possibly disclosure of personal information. However, the written agreement between the two parties does not specifically address personal information handling or security.

[48] In my view, Pierson's has not made reasonable security arrangements to protect personal information collected, used and/or disclosed by Graystone on Pierson's behalf from such risks as unauthorized access, use, disclosure, destruction, disposal, etc. In this regard, I find Pierson's is in contravention of section 34 of PIPA.

Employment

[49] The Complainant expressed concern over Pierson's employment of certain individuals, stating ...

... I do not believe that Pierson's or other funeral homes should be using people like [named employees] to garner such highly personal, private and confidential information. I would like to know what and how these people ... are chosen and exactly what type of agreement they enter into with funeral homes.

[50] As noted above, section 34 of PIPA requires organizations to make reasonable security arrangements to protect personal information against such risks as unauthorized access, collection, use, disclosure, copying, modification, disposal or destruction. In my view, complying with section 34 requires that organizations build privacy and security into their recruitment and staff management (training) activities.

[51] *PIPA Advisory #8: Implementing Reasonable Safeguards*¹, acknowledges that “many information security breaches occur because staff members are not aware of what is expected of them or, in some cases, as a result of intentional misuse of information.” The *Advisory* suggests a number of safeguards an organization might consider implementing to minimize these kinds of risks, including, among others:

- Conduct pre-employment screening checks where required. However, ensure that security checks and collection of information are directly related to job function.
- Provide information privacy and security education and training for staff at the time of hire, and regularly throughout the duration of employment.

[52] Pierson’s responded to the Complainant’s concern by reporting that it screens potential employees and includes “confidentiality and privacy” as part of ongoing staff training. Pierson’s also advised that many of its staff members are Licensed Funeral Directors, and have received privacy training through licensing programs.

[53] In any event, the provisions in PIPA cannot prevent Pierson’s from hiring any particular individual to perform a specific job; section 34 of PIPA does, however, require that Pierson’s make reasonable arrangements to protect personal information. As noted above, in my view, this means that organizations must build privacy and security into their recruitment and staff management (training) activities. Reasonable efforts would include screening for responsible individuals when hiring, and ensuring staff receive appropriate privacy and security training. In light of Pierson’s response to this complaint, I am satisfied that Pierson’s has made reasonable arrangements.

5. Does Pierson’s comply with the retention requirements set out in section 35 of PIPA?

[54] In his complaint, the Complainant questioned how long Pierson’s retains personal information it collects from individuals.

[55] Section 35 addresses the retention of personal information as follows:

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

[56] With respect to the retention of personal information, Pierson’s reported that it “permanently retains file information regarding each deceased person we

¹ Published by this Office and available on the OIPC website at www.oipc.ab.ca

have cared for since our business was formed in 1983. Financial records are retained for 7 years.”

[57] The wording of section 35 of PIPA is permissive; that is, it authorizes an organization to retain personal information for legal or business purposes “as long as is reasonable.” Section 35 (as it was at the time of this complaint) does not explicitly require an organization to destroy personal information that is no longer required for reasonable purposes.

[58] Given this, and despite the fact that Pierson’s has not provided a rationale for retaining personal information in perpetuity, I will not make a finding with respect to Pierson’s compliance with section 35 of PIPA. However, Pierson’s should be aware that section 35 of PIPA was recently amended, and now reads as follows:

35(1) An organization may retain personal information only for as long as the organization reasonably requires the personal information for legal or business purposes.

(2) Within a reasonable period of time after an organization no longer reasonably requires personal information for legal or business purposes, the organization must

(a) destroy the records containing the personal information, or

(b) render the personal information non-identifying so that it can no longer be used to identify an individual.

(3) Subsection (1) applies notwithstanding any withdrawal or variation of the consent of the individual that the personal information is about under section 9. [emphasis added]

[59] Given the amended section 35 of PIPA, I recommend that Pierson’s review its retention practices to determine a reasonable length of time for the retention of its files, and securely destroy or render non-identifying, any personal information that is no longer reasonably required for legal or business purposes.

VI. FINDINGS AND RECOMMENDATIONS

[60] The findings from this investigation are as follows:

- The information that Pierson’s provided to Graystone is information about the Complainant and his wife, and qualifies as personal information as defined in section 1(k) of PIPA.

- Pierson’s contravened section 7(1)(c) of PIPA when it used the personal information of the Complainant and his deceased wife without consent to mail a Client Satisfaction Survey to the Complainant.
- Pierson’s general practice with respect to using personal information for purposes of mailing the Client Satisfaction Survey does not meet the consent requirements set out in PIPA.
- Pierson’s did not notify the Complainant of the purposes for which his information was collected, in contravention of section 13 of PIPA.
- Pierson’s has developed a privacy policy as required by section 6 of PIPA.
- There is no evidence that Pierson’s failed to make reasonable arrangements to protect personal information in its custody, as required by section 34 of PIPA. However, Pierson’s has not made reasonable security arrangements to protect personal information collected, used and/or disclosed by its service provider, Graystone, from such risks as unauthorized access, use, disclosure, destruction, disposal, etc. In this regard, Pierson’s is in contravention of section 34 of PIPA.
- Pierson’s recruitment and staff training practices constitute reasonable security arrangements to protect personal information, as required by section 34 of PIPA.
- I did not make a finding with respect to Pierson’s compliance with section 35 of PIPA (retention of personal information in its client files).

[61] Given my findings, I make the following recommendations to Pierson’s:

1. Consent: Pierson’s should obtain express consent from individuals, in writing or orally, to use personal information for purposes of mailing the Client Satisfaction Survey. Individuals should be given the option to decline or object to this use of their personal information.
2. Although I found Pierson’s has complied with section 6 of PIPA and has developed a privacy policy, I recommend Pierson’s review this policy and consider revising it to more clearly identify what personal information is collected from individuals, for what purposes, with specific reference to the Client Satisfaction Survey.

Although not in force at the time this complaint was made, I note that recent amendments to PIPA include new obligations for organizations such as Pierson’s that use service providers outside of Canada. Section 6(2) requires organizations that use service providers outside

of Canada to collect, use, disclose or store personal information to include in their policies and practices information regarding:

- the countries outside Canada in which the collection, use, disclosure or storage is occurring or may occur, and
- the purposes for which the service provider outside Canada has been authorized to collect, use or disclose personal information

The new section 13.1 of PIPA states that an organization that uses a service provider outside Canada to collect personal information with consent, or that transfers to a service provider outside of Canada information that was collected with consent, must, at the time of collecting or transferring the information, notify the individual of

- the way the individual may obtain access to written information about the organization's policies and practices with respect to service providers outside Canada, and
- the name of someone who can answer the individual's questions about the collection, use, disclosure or storage of personal information by the service provider outside of Canada.

These amendments came into force on May 1, 2010. I recommend Pierson's review its existing policies and notification practices to ensure they comply with the recent amendments respecting service providers outside of Canada.

3. Security: Pierson's should revise its agreement with Graystone to include provisions that address, at a minimum:
 - limiting the collection, use and disclosure of personal information to what is required to provide the service,
 - disposition of personal information when the contract concludes,
 - retention of personal information,
 - safeguarding practices,
 - access to personal information,
 - audit provisions to allow Pierson's to monitor Graystone's compliance with contract provisions.
4. Retention: Pierson's should review its retention practices to determine a reasonable length of time for the retention of its client files, and securely destroy or render non-identifying, any personal information that is no longer reasonably required for legal or business purposes.

VII. CONCLUSION

[62] Pierson's agreed to implement the recommendations as set out above.

[63] This file is now closed.

Signed in the absence of:

Jill Clayton, Assistant Commissioner
Personal Information Protection Act