



PIPA CASE SUMMARY P2006-CS-005

Event planning company collects voice recording from individual without consent and refuses individual's access to it.

Summary

An individual alleged that he received a telephone solicitation for a charity fundraiser from a person who identified himself as a member of the municipal police service. He later learned that the call was actually from a Xentel DM Inc. ("Xentel") telemarketer calling on behalf of a charity. When he telephoned Xentel to complain, it was revealed that solicitation calls are recorded by Xentel. The individual's wife contacted Xentel in order to obtain the recording of her husband's transaction with Xentel. Her request was denied.

Xentel stated it retains solicitation recordings for quality assurance, improvement of service delivery, employee development, and liability purposes. Xentel conceded that no consent was obtained from customers, as the recordings were considered to be for internal use only. As such, the Organization did not consider the recording to be accessible to individuals requesting access. The Organization also maintained that employees are required to adhere to an approved script when engaging customers in solicitations. Xentel found that the canvasser did not adhere to the approved script in this case.

Jurisdiction

PIPA applies to provincially-regulated private sector organizations operating in Alberta, including Xentel. The Information and Privacy Commissioner has jurisdiction in this case because Xentel DM Inc. is "an organization", as defined in section 1(i) of the Act. 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. The Commissioner initiated an investigation of his own accord.

Analysis & Findings

According to section 11(1) and section 7(1)(a) of PIPA, an organization's collection of personal information must not only be for a reasonable purpose, it must also be with the consent of the individual. Section 10 of PIPA specifies that consent is negated if obtained by using misleading practices.

The Privacy Commissioner of Canada has rendered various decisions under the *Personal Information and Protection of Electronic Documents Act* (PIPEDA) on the requirement for consent to record telephone conversations, most notably in "PIPEDA" Case Summaries 86 and 176. The federal Commissioner also established this in the document entitled "Best Practices for the Recording of Customer Telephone Calls".

The purpose for this collection (quality assurance) appears reasonable in accordance with section 11 of PIPA. The recording revealed that the employee who dealt with this individual deviated from the script and made statements that led the individual to assume he was speaking with a police officer. This incident offers evidence of Xentel's need to ensure that telemarketers adhere to the approved script by reviewing recordings. However, a reasonable purpose and the requirement for consent are not mutually exclusive. In this case Xentel failed to obtain consent for taping the call, in contravention of section 7(1)(a) of PIPA. The consent to *use* the man's personal information to process his purchase was obtained strictly because the man was under the impression that he was speaking to a police officer. He would not have purchased the tickets otherwise. Section 10 of the Act negates consent (under section 7(1)(c) in this case) if that consent was obtained through misleading practices.

Section 24 of PIPA enables individuals to obtain access to their personal information. It is true that the individual himself did not make the request and did not put it in writing, as the Act requires. However, rather than advising his wife of the proper means to make an access request, as PIPA's 'duty to assist' provision (section 27) requires, Xentel simply refused access in contravention of section 29 of PIPA. That is to say, no reason for refusal was given. At the time, Xentel (as a matter of policy) did not release the tape.

Recommendation

The investigator found that the Organization contravened sections 7(1)(a) and (c), 27, and 29 of PIPA, but did not contravene section 11 of PIPA.

Xentel advised that it would notify all customers of its practice of recording phone calls, pursuant to section 8(3), as well as the purpose for the practice in accordance with section 13(1) of the Act. Customers who refuse to give their consent for the recording are given an email address or telephone number to contact the charity directly. Xentel also implemented a new protocol to enable individuals to obtain access to their voice recordings and other personal information on request.