



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
— for —
British Columbia

Order P10-01

HOST INTERNATIONAL OF CANADA LTD

Jay Fedorak, Adjudicator

February 10, 2010

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Summary: A restaurant required the complainant to present identification before serving him alcohol, because the parent organization had a policy of requiring identification from all customers. The complainant felt that this collection of personal information was unnecessary because he was sixty years old and, from his appearance, clearly of legal drinking age. The collection of his personal information was not necessary for the purposes of serving him and contravened s. 7(2) of PIPA. The organization is required to change its policy with respect to all franchises in British Columbia, so as not to require identification from customers who are clearly of legal drinking age.

Statutes Considered: *Personal Information Protection Act*, s. 7(2).

Authorities Considered: **B.C.:** Order P09-01, [2009] B.C.I.P.C.D. No. 16; Order P07-02, [2007] B.C.I.P.C.D. No. 37; Order P05-01, [2005] B.C.I.P.C.D. No. 18.

1.0 INTRODUCTION

[1] This decision deals with a complaint by a customer who attended a White Spot restaurant franchise at the Vancouver International Airport. When the complainant ordered a beer with his meal, the waitress asked him to show identification, as the restaurant had a policy of verifying the age of everyone who ordered alcohol. The complainant, who says he is over 60 years of age, objected to the restaurant collecting his personal information because he felt it was clear that he was over the legal drinking age (19 years old in British Columbia). He provided his driver's licence to the waitress but decided to lodge a formal complaint with the owner of the franchise, Host International of Canada Ltd.

(“Host International”). Dissatisfied with the response he received, he made a formal complaint under the *Personal Information Protection Act* (“PIPA”) to the Office of the Information and Privacy Commissioner (“OIPC”).

[2] Because the matter was not resolved in mediation, it was referred to a written hearing under PIPA. The OIPC sent the Notice of Written Hearing to the complainant and Host International. After the OIPC received submissions, Commissioner Loukidelis released Order P09-01¹, concerning the scanning of customers’ driver’s licences by a nightclub. As he felt that conclusions that he reached in that Order were relevant to this case, he invited the parties in this hearing to provide further submissions, which they did.

2.0 ISSUE

[3] The Notice of Written Hearing sets out the following issue:

Whether Host International, as a condition of supplying a product or service, required the complainant to consent to the collection of his personal information beyond what was necessary for Host International to provide the product or service pursuant to s. 7(2) of PIPA.

[4] The relevant provision reads as follows:

7(2) An organization must not, as a condition of supplying a product or service, require an individual to consent to the collection, use or disclosure of personal information beyond what is necessary to provide the product or service.

[5] Sections 51(a) through (c) of PIPA address the burden of proof in only three kinds of cases, none of which is relevant here. As noted in Order P07-02,² PIPA has no burden of proof provision for other issues that can arise for adjudication in a Part 11 inquiry, such as the one here, meaning that each party should provide information and arguments to justify its position on the issue.

3.0 DISCUSSION

[6] **3.1 Does Viewing Personal Information Without Recording it Constitute Collection?**—The submissions of both parties accept that the viewing without recording of personal information from the complainant’s driver’s licence by the waitress constituted a collection of personal information under PIPA. As the complainant noted, this is consistent with the approach of the OIPC, as indicated in the publication entitled *“Collection of Driver’s Licence Numbers under Private Sector Privacy Legislation – A Guide for Retailers”* that the OIPC issued in December 2008 jointly with the Office of the Privacy

¹ [2009] B.C.I.P.C.D. No. 16.

² [2007] B.C.I.P.C.D. No. 37, para. 6.

Commissioner of Canada and the Office of the Information and Privacy Commissioner for Alberta. The Guide states that “collection” includes “examining the driver’s licence”.³ For the purpose of this hearing, I find that the viewing of the complainant’s driver’s licence constitutes collection of his personal information.

[7] **3.2 Is Collection of Personal Information to Verify Age “Necessary”?**—The issue in this hearing is whether it was “necessary” for Host International to collect personal information about the complainant’s age as a condition of serving him alcohol.

[8] The complainant objects to Host International’s policy of verifying the identification of all patrons prior to serving them alcohol. He states:

I am 60 years old, grey haired and wrinkled; I can hardly be mistaken for someone on the boundaries of 19 years of age. ... I feel this policy of ID’ing people who are clearly over the legal drinking age of 19 years is unnecessary, embarrassing, a violation of my privacy, and clearly does not pass the “reasonableness” test of why personal information about age is being collected as a condition of service within the restaurant.⁴

[9] The reason for this policy, the waitress told him, was that Host International did not want to single anyone out. The complainant asserts that he had never been asked in any of the restaurants, pubs, bars, clubs or stores in British Columbia he has patronized to show his identification to purchase alcohol. He has also made inquiries to determine whether there are other companies operating in British Columbia with the same policy. He states that he contacted several different franchises and none of them had a policy of verifying the identity of individuals over 25 years of age. Even at the Vancouver International Airport, the only restaurants that have this policy are those owned by Host International.⁵

[10] Host International takes the position that its policy is not unreasonable. It claims that it has a legal right to deny alcohol to patrons. It also asserts that it did not require the complainant to provide identification. It said it merely notified him of the policy and presented him with a choice, leaving him the option to decline if he did not wish alcohol. It further justifies its policy this way:

The 100% ID policy is both to prevent underage drinking in particular, and to remove from our employees the discretion to decide when to demand ID and when not to demand ID. Employees failing to ID customers may be

³ Complainant’s initial submission, para. 5.3; Office of the Information and Privacy Commissioner for British Columbia; Office of the Privacy Commissioner of Canada; the Office of the Information and Privacy Commissioner for Alberta, *Collection of Driver’s Licence Numbers under Private Sector Privacy Legislation – A Guide for Retailers*, p. 2, http://www.oipcbc.org/pdfs/private/guide_edl_e.pdf.

⁴ Complainant’s initial submission, para. 3.

⁵ Complainant’s initial submission, paras. 4.1; 6.4.1.1; 6.4.1.2; 6.4.2.

terminated, which serves as deterrent [*sic*], and helps avoid underage drinking, which is the goal.⁶

[11] The complainant responded thus:

Host's inability to trust the judgment of its employees to make a reasoned decision concerning who is or might be under age to purchase alcohol is no reason to subject the population of BC to their ridiculous practice of ID'[in]g people clearly of legal age and beyond. I am very surprised that Host, apparently a successful organization, has evidently no confidence in its ability to adequately train its staff as it relates to ID'[in]g patrons, and yet the other 8900 liquor licensees in the province are able to do this.⁷

[12] Host International also considers it relevant that this restaurant is located in a major international airport, where travellers are frequently required to provide identification.⁸ The complainant rejects the argument that individuals should have a lower expectation of privacy simply because the restaurant is located in an airport.⁹ I agree with the complainant. Airports must verify the identity of passengers for security reasons that are not relevant here. The fact that the restaurant happens to be located within an airport is immaterial.

[13] The parties' arguments as to whether it is "reasonable" for Host International to require patrons to show identification in order to be served alcohol, would be relevant if s. 11 of PIPA were at issue in this hearing. Section 11 allows organizations to collection information only for purposes that "a reasonable person" would consider "appropriate". In Order P09-01, Commissioner Loukidelis reviewed different purposes for which the organization was collecting personal information confirming identity and age of customers, and determined that it was reasonable to collect this information for some purposes but not for others.¹⁰ Nevertheless, s. 11 is not at issue in this hearing. The issue is whether collection was necessary in accordance with s. 7(2).

[14] Commissioner Loukidelis dealt with the meaning of the word "necessary" in Order P05-01 concerning the collection of personal information to facilitate the return of goods for a refund.¹¹ He found that, in that case, it did not mean "indispensable". He said further:

PIPA's legislative purposes, the overall statutory context in which the word "necessary" appears and the language of s. 7(2) lead me to conclude that the Legislature did not intend to create a strict standard of indispensability by using the word "necessary". Personal information may be "necessary"

⁶ Host International's initial submission, p. 3.

⁷ Complainant's reply submission, para. 7.

⁸ Host International's initial submission, p. 1.

⁹ Complainant's reply submission, para. 1.2.

¹⁰ [2009] B.C.I.P.C.D. No. 16, paras 11-137.

¹¹ [2005] B.C.I.P.C.D. No. 18.

under s. 7(2) even if it is not indispensable. Of course, personal information may, in some cases, be “necessary” in the sense that it is not possible to supply a product or service without the personal information or because it is legally required for the supply. But there will be cases where personal information is “necessary” even though it is not, when considered in a searching yet reasonable manner, indispensable in the sense that it is not possible to supply the product or service without the personal information.¹²

[15] He elaborated on this concept in Order P09-01:

... For personal information to be “necessary” for the purposes of s. 7(2) of PIPA, the purposes for the collection, use or disclosure must be integral to the provision of the product or service. In addition, the personal information in question must fulfill a significant role in enabling the organization to achieve that purpose.¹³

[16] In Order P05-01, he found that the collection of personal information was necessary for the purpose of fraud prevention, but not for the purpose of customer satisfaction follow-up. He also found in Order P09-01 that the collection by a nightclub of identification from all customers was necessary for safety purposes, to prevent patrons who present known risks from entering the premises. Nevertheless, he did not find the same with respect to the nightclub collecting identification from all customers to ensure that they were all of legal age to enter the premises. He held that:

It is not necessary, for the purposes of preventing the entry of minors, to collect the IDs of those who are clearly overage.¹⁴

[17] It was owing to this finding that he invited the parties to comment on that Order for the purpose of this hearing. Both parties responded, but did not address this particular finding in their submissions.

[18] The circumstances of this case are the same with respect to collecting personal information to determine whether customers are of age. It is not, in my view, necessary for Host International to collect this information from every customer. I find that it is necessary for Host International to collect identification about customers only where there is a reasonable basis to suspect that they may not be of legal drinking age. Although I have not seen the complainant, I accept that, based on his description of himself, it would be obvious to any employee of Host International that he was over the legal drinking age. Therefore, I find that Host International contravened s. 7(2) of PIPA when it required the complainant to produce identification in order to be served alcohol.

¹² [2005] B.C.I.P.C.D. No. 18, paras. 77-78.

¹³ [2009] B.C.I.P.C.D. No. 16, para. 40.

¹⁴ [2009] B.C.I.P.C.D. No. 16, para. 60.

[19] This also means that Host International's policy of collecting this information from all customers violates s. 7(2) of PIPA. Host International will have to make changes to this policy and provide a copy to the OIPC. I will not prescribe what this policy should entail, but it cannot require identification from individuals, like the complainant, who are obviously over the age of 19.

[20] I should note that this finding applies only to those franchises of Host International located in British Columbia. I realize that Host International owns franchises in other jurisdictions that might be subject to different regulations, and I acknowledge that this Order does not apply to policies that Host International develops for those other franchises.

4.0 CONCLUSION

[21] For the reasons set out above, pursuant to ss. 52(3)(e) and 52(3)(f) of PIPA, I order Host International to stop collecting personal information in contravention of PIPA. This requires Host International to provide me in writing, within 30 days of the date of this Order, as PIPA defines "day", that is, on or before March 24, 2010, a copy of its revised policy on requiring proof of legal age from customers before serving them alcohol.

February 10, 2010

ORIGINAL SIGNED BY

Jay Fedorak
Adjudicator

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