



# About Condo

## MATTERS OF PRIVACY

January 2004 brought into effect the Personal Information Protection and Electronic Documents Act, ("PIPEDA"). PIPEDA establishes ground rules for the collection, use and disclosure of personal information in the private sector. It relates particularly to the use and disclosure of such information by organizations engaged in any commercial activity. The intent of PIPEDA is to balance the individual's right to the privacy of his or her personal information with the need of organizations to collect, use and/or disclose personal information for legitimate purposes.

In the simplest terms, under PIPEDA each organization must appoint a "privacy officer" (the title is irrelevant: this means simply someone responsible to oversee compliance with PIPEDA) and develop a written policy describing how and for what purposes it collects, makes use of and/or discloses personal information of almost any individual.\* The Office of the Privacy Commissioner of Canada ("OPC") is entitled to audit organizations to determine if their practices relating to personal information are consistent with PIPEDA.

This memorandum outlines the application of PIPEDA to condominiums, fundamental principles of the legislation and some general guidelines on compliance. For specific direction on preparing privacy policies and dealing with particular compliance issues or questions, you should consult legal counsel.

### APPLICATION TO CONDOMINIUMS

Initially, lawyers had questioned whether or to what extent this legislation applies to condominium corporations. The doubt arose on account of uncertainty about the meaning and scope of the term "commercial activity" in PIPEDA. The Act defines the term broadly, and, to date, the OPC has said little more than that the following are not commercial activities (addressing non-profit and charitable organizations):

- Collecting membership fees
- organizing club activities
- compiling a list of members' names and addresses
- mailing out newsletters, and
- fundraising

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\* There are some exceptions. For example, the handling of employees' personal information is not governed by PIPEDA except for employees who are in the Federal sector. Until Ontario passes its own privacy legislation, there are no mandatory privacy rights granted to employees.

Thus, while it seemed apparent from the start that the condominium corporation as an employer and contractor for services should be subject to PIPEDA, it has not been clear that PIPEDA would apply to its collection, use or disclosure of unit owner information for its own organizational and management purposes not clearly related to commercial activities. However, this does not appear to be reasonably in doubt anymore.

As indicated by the following case summary by the OPC, unit owner information collected and used by condominiums is going to be subject to the principles and provisions of PIPEDA, and is not limited to a unit owner's personal contact information:

### **Settled case summary #20\***

#### ***Condominium corporation learns that personal information consists of more than just contact information***

##### **Complaint**

An individual was involved in a dispute with a condominium corporation, in which the corporation alleged in a letter that she had contravened a corporation by-law. She was concerned that the corporation had sent a copy of its letter to her about the matter to all of the condominium owners in the complex. It also posted the letter on a bulletin board and included it in the Minutes of a Board meeting.

##### **Outcome**

The investigation confirmed that the condominium corporation had indeed made its letter available to the condominium owners. However, the corporation was under the impression that the personal information contained therein consisted solely of her name, address and telephone number. As this information was on the condominium owners' telephone list and also included in the city's telephone directory, it was publicly available and thus not subject to the Act. The Office advised the corporation that this was not the personal information at issue; rather, it was the fact that the complainant was involved in a dispute with the corporation. The corporation had disclosed this several times to all the condominium owners without the complainant's consent.

The condominium corporation sent the complainant a letter of apology, and the Office and the complainant considered the matter to be settled.

## **WHAT IS PERSONAL INFORMATION?**

"Personal information" includes *any* factual information about an identifiable individual, recorded or not. As set out in the example Case Summary above, it can even include the fact that a unit owner is engaged in a dispute with the condominium board. It may also include the following information types to which the corporation and board might or might not be privy:

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\* This and the other case summary quoted in this memorandum are available on the OPC website, <http://www.privcom.gc.ca>. They are reprinted here almost exactly as presented on that website.

- Contact information for owners, residents and emergency contacts, and including cellular phone and unlisted numbers and e-mail addresses;
- bank account details and other information relating to personal finances that might be obtained (such as credit information, common expense arrears, the amount and regularity of condominium liens, other encumbrances on title);
- details as to the way in which title to the unit is held;
- details as to leases of the unit, including the amount of rent being collected;
- power of attorney documents submitted on behalf of an owner for voting or other purposes; and
- personal issues, such as family, health, employment or marital status.

## FUNDAMENTAL PRINCIPLES

A crucial principle and the key component to understanding and applying PIPEDA is that an individual is entitled to control over his or her own personal information. Therefore:

- such information cannot be collected for illegitimate purposes, nor should any organization seek to collect more information than it reasonably requires in order to fulfill its legitimate and stated purposes;
- such information cannot be used in any way or disclosed to any person for without the individual's consent;
- the individual must have access to, and the right to correct, any of such individual's personal information that is kept by the organization. (Presumably this latter requirement is at least subject to privilege rules relating to litigation files.)

To help put the foregoing into effect, PIPEDA specifies ten specific "principles" relating to the privacy of personal information with which each organization is required to comply:

### 1. *Accountability*

The organization is responsible for its treatment of personal information.

Technically, accountability for such responsibility rests directly with the organization's "privacy officer" (see further comments on compliance below). However, we do not think the board can avoid being responsible to ensure that there is at least substantial compliance with PIPEDA or blame the privacy officer if the board has not given its own attention to these matters.

### 2. *Identifying Purpose*

In order not to collect more information than is needed, and to help ensure individuals dealing with the organization know what personal information is being collected, the purposes for which personal information is collected must be identified at or before the time the information is collected.

### 3. Consent

The knowledge and consent of the individual are required for the collection, use or disclosure of personal information. In some circumstances it is acceptable not to seek the individual's consent, such as (for example only) where the information is already in the public record, and where corporation discloses information to the extent necessary in order to:

- collect on a debt (such as arrears of common expenses);
- provide instructions to legal counsel to commence legal action; or
- comply with applicable laws or a subpoena.

It is expected that in most cases express consent will be both available and necessary.

Remember that consent *really means* consent. Although consent can sometimes be implied rather than express, it must be actual, meaningful consent. In this arena, if you feel like you are cutting corners, you probably are, and that is simply not advisable.

### 4. Limiting Collection

The collection of personal information is limited to that which is necessary for the purposes identified by the organization. Information must be collected by fair and lawful means. Representatives of the organization collecting information must be able to explain why the information is needed.

### 5. Limiting Use, Disclosure and Retention

Personal information must not be used or disclosed for purposes other than those for which it was collected, except with the consent of the individual or as required by law. Information is to be retained for only as long as necessary to fulfill such purposes.

### 6. Accuracy

Collected information is to be accurate, complete and as up-to-date as necessary for the purposes for which it is to be used. Routine updating should only be done if necessary to fulfill the purposes for which the information is kept.

### 7. Safeguards

Security safeguards appropriate to the sensitivity of the information need to be in place.

### 8. Openness

Specific information about the organizations privacy policies and practices shall be available to all individuals.

### 9. Individual Access

Upon request, a person is to be advised what information is held and be given access to that information. He or she is entitled to challenge the accuracy and completeness of the information and have it amended as appropriate.

### 10. Challenging Compliance

Anybody is entitled to question whether there is actual compliance with the above principles to the organization's privacy officer.

## COMPLIANCE

As the foregoing suggests, compliance with PIPEDA matters. The OPC has the authority to investigate any complaint, audit the organization's personal information management practices, publicly report any abuses and seek remedies in court (such as damages or convictions).

The following are some suggested steps for basic compliance:

- 1) Familiarize yourself with the provisions of PIPEDA. You could read the legislation, which is usually advisable even if sometimes the law is incomprehensible, and you can review summaries and guidelines provided by the OPC and/or your legal counsel. The OPC website, [www.privcom.gc.ca](http://www.privcom.gc.ca), contains several useful articles, case summaries and other information.
- 2) Select a "privacy officer" who has responsibility for your condominium's compliance with the Act. The privacy officer is to:
  - a. review, analyze and determine in what ways PIPEDA impacts the corporation's activities, including an analysis of:
    - i. what personal information is collected (i.e., section 47 records, section 83 lease information, banking details for payment of common expenses, etc.),
    - ii. for what purposes (i.e., collecting common expenses, providing notices of meetings and other notices required under the *Condominium Act, 1998*, etc.), and
    - iii. how it is handled, stored, managed, used, who has access to it and to whom it is disclosed;
  - b. assist the board to establish a written "privacy policy" which should explain policies, practices and procedures with respect to at least the following issues:
    1. the purposes of collection of personal information;
    2. the method(s) by which consent is obtained;
    3. restrictions on collection, use and disclosure of personal information;
    4. how to ensure information is correct, complete and current;
    5. how to ensure there are adequate and effective security measures in place;

6. a retention and destruction timetable;
7. a method for processing access requests; and
8. appropriate responses to inquiries and complaints;

and be involved in on-going development and updating of the policy as new circumstances or needs arise;

- c. train staff (and board members and officers of the corporation) on compliance with the privacy policies and procedures; and
  - d. become the key resource person in the condominium to answer questions, such as what and how personal information is collected, how (and confirm that) consent is obtained, how personal information is circulated internally, what is it used for, and if it is ever disclosed to third parties and for what purposes.
- 3) Ensure all staff, board members and the property manager know of, understand and regularly follow the privacy policy of the corporation.
  - 4) Make sure personal information is kept secure by keeping it physically, and, where applicable, electronically, protected. A fire-proof, locked cabinet is generally sufficient for most information. Information kept on computer should be protected and backed-up regularly. Design, test, evaluate and, as necessary, change (i.e., improve) storage systems and processes regularly. Do not leave personal information out in the open (and be careful about what you post on bulletin boards and in newsletters).
  - 5) Limit the number of persons who have access to the information so that only those who actually need it have regular access to it.
  - 6) When dealing with access to records requests under section 55 of the *Condominium Act, 1998* (the "Act") take steps to ensure records are carefully vetted to avoid inadvertent non compliance with PIPEDA or any other (if any) applicable privacy legislation, including the provisions of section 55 of the Act.
  - 7) Ensure that third parties with whom you work and who must process personal information provided by you provide at least the same level of protection that you do and will not disclose the information to others. For example, the condominium corporation must disclose information to management. Information may also be disclosed sometimes to collection agencies, condominium staff, lawyers and other professional advisors.

For much of this kind of disclosure, consent of the unit owner may be implied; however it is still prudent to ensure that the third parties obtaining such information have equivalent privacy policies and security measures in place so that the information, once released, does not thereafter get treated improperly.

## A FINAL COMMENT ABOUT LANDLORDS AND TENANCY INFORMATION

Almost invariably, one dispute over privacy that arises in condominiums involves the requirements of section 83 of the Act for a unit owner who is a landlord to provide details regarding the tenant and tenancy to the condominium board. We have encountered a handful of situations where landlords are reluctant to give tenancy information on account of privacy legislation. The OPC has determined that there is no breach of PIPEDA in the giving of this information to the condominium corporation even where there is no consent by the tenant, as indicated in the following Case Summary:

### **PIPEDA Case Summary #342**

#### ***Owner allowed to disclose tenants' rent information***

The owner of a townhouse complained when the property management company hired by her condominium corporation asked her to complete a "Summary of Lease or Renewal" form. The form was seeking information (such as the amount of rent paid) required under provincial condominium legislation. The complainant felt that the company's request was inappropriate and she refused to disclose the information.

The Assistant Privacy Commissioner disagreed with the complainant. She noted that the complainant, as a landlord, was in fact subject to the *Personal Information Protection and Electronic Documents Act*, as she was engaged in a commercial activity. The Assistant Commissioner determined that the disclosure of such information without knowledge or consent was allowed under the *Act* as the disclosure was required by law. She therefore concluded that the property management company had not contravened the *Act* by requiring such information from the complainant.

The following is a summary of the investigation and the Assistant Commissioner's deliberations.

#### **Summary of Investigation**

The complainant completed the form sent to her by the property management company but refused to provide any particulars on how much rent her tenants pay or when the payments are due, as she believed such information was of no concern to the condominium corporation or the management board that acts on its behalf.

The Office reviewed subsection 83(1) of the *Ontario Condominium Act*, which states:

*The owner of a unit who leases the unit or renews a lease of the unit shall, within 30 days of entering into the lease or the renewal as the case may be,*

- a. *notify the Corporation that the unit is leased;*
- b. *provide the Corporation with the lessee's name, the owner's address and a copy of the lease or renewal or a summary of it in the form prescribed by the Minister;*

- c. provide the lessee with a copy of the declaration, by-laws and rules of the Corporation.

Subsection 83(3) requires that the Corporation "maintain a record of the notices that it receives under this section."

The Respondent stated that it has the right to attach or collect the rent from the tenant of an owner if the owner does not pay the prescribed common fees levied to each owner and that this a "compliance issue of Section 83" of the *Ontario Condominium Act*.

## Findings

Issued July 21, 2006

*Application:* Principle 4.5 states that personal information shall not be used or disclosed for purposes other than those for which it was collected, except with the consent of the individual or as required by law.

Paragraph 7(3)(i) states that an organization may disclose personal information without the knowledge or consent of the individual only if the disclosure is required by law.

In making her determinations, the Assistant Commissioner deliberated as follows:

- The Assistant Commissioner first pointed out that, for the purposes of the *Personal Information Protection and Electronic Documents Act*, the complainant, as a landlord, is an organization engaged in a commercial activity. During the course of the commercial activity, she is collecting, using or disclosing personal information, namely, the personal information of her tenants. Accordingly, she is responsible for ensuring her compliance with the Act.
- The information that the property management company was seeking was the personal information of the complainant's tenants. Under the Act, an organization (in this case, the complainant) shall not disclose individuals' personal information unless the organization has their knowledge or consent or it is required by law.
- In this instance, the property management company cited the relevant legislation that obliges it to collect this information and the complainant to disclose it.
- The Assistant Commissioner therefore found that the property management company did not contravene the Act by requesting the information in question. Similarly, she was satisfied that the exception to consent provided under paragraph 7(3)(i), applied and she noted that the complainant would not have been in contravention of this law had she disclosed the information without her tenants' knowledge or consent.

***The Assistant Commissioner concluded that the complaint was not well-founded.***

Michael H. Clifton (September 2007)