

# PRIVACY COMMISSION of CANADA Addresses PRIVATE and PUBLIC HOUSING INDUSTRY PIPEDA COMPLIANCE

## Industry Poised to Implement Privacy Policy

### Privacy Commission Addresses Fair Information Practices for the Industry.

**R**ent Check, major stakeholders and housing industry representatives have once again shown that rare ability to come together and participate in an effort to obtain important information for industry compliance with new upcoming privacy legislation, the Personal Information Protection and Electronic Documents Act, (PIPEDA). Coming into force on January 1, 2004, this timely endeavor made it possible to receive answers to several crucial questions about compliance that could not have been accomplished without the following interested parties and participants.

Multiple Dwelling Standards Association (MDSA), Greater Toronto Apartment Association (GTAA), Joe Hoffer, Lawyer. Cohen & Highley LLP, Lawyers, John Dickie, Dickie & Lyman Lawyers LLP, Eastern Ontario Landlord's Organization (EOLA), Joy Overtveld,

Lawyer, Ottawa Region Landlord's Association (ORLA), Canadian Federation of Apartment Associations (CFAA), Rent Check Credit Bureau (RCCB), Ontario Non-Profit Housing, Association (ONPHA), Fair Rental Policy Organization (FRPO), Ottawa Real Estate Board (OREB), as well as the British Columbia Non-Profit Association (BCNPHA), Co-operative Housing Federation of Toronto (CHFT), Saskatchewan Rental Housing Industry Association Inc. (SRHIA), and the Edmonton Apartment Association (EAA).

Throughout the meeting, it should be noted that the Industry's compliance to the principles and safeguards of



The Rental Housing Industry's only voice  
at City Hall

the PIPEDA, was the subject of our discussions. The intention to deal with only issues for private, non-profit and co-operative housing providers was successful. Distribution is by email to all interested parties listed. Contact the author to withdraw from the mailing list.



#### Special points of interest:

- Consent, a core requirement
- Debts owed, Damages presently a gray area.
- Withdrawing consent
- Third parties, who is liable
- Provincial vs. Federal privacy legislation

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**Canadian  
Federation of  
Apartment  
Associations**

**Fédération  
Canadienne Des  
Associations  
De Propriétaires  
Immobiliers**

*"Representing property management organizations across Canada"*

## Meeting Attendees

The meeting with the office of the Privacy Commission of Canada was held on October 1, 2003, 10:00 am at the Privacy Commission's offices in Ottawa. In attendance were Heather Black, Assistant Privacy Commissioner, Ann Goldsmith, Legal Counsel to the Office of the Privacy Commissioner, John Dickie, Lawyer and Chair, Eastern On-

tario Landlord's Organization (EOLA), Joy Overtveld, Lawyer, Ottawa Region Landlord's Association (ORLA), John Dobrowski, President & CEO Rent Check Credit Bureau, and Brenda Maxwell, Director of Sales & Marketing Rent Check Credit Bureau.



## Topics and Responses

### 1. Personal Information Retention

- a. Personal information can be retained only for as long as necessary, or for as long as you are obliged to retain it by law.

(Note to reader)

Your Privacy Policy should contain a definite information destruction statement such as records are destroyed after seven years, for instance.

### 2. Consent

- a. Express consent must be obtained from an applicant for tenancy to Collect, Use and Disclose personal information given on a rental application or any time a new use and/or disclosure is identified during the tenure of the residency.
- i. The consent language must give as much detailed information as necessary for the consumer to understand why each item of personal information is collected, how it will be used, and to whom it will be disclosed and how they will be using it.
- b. If a prospective tenant refuses to sign consent language you can refuse him/her rental accommodation

on the grounds that you cannot determine credit or tenancy-worthiness.

(Note to reader)

A new use exists if it was not part of the uses listed when the personal information was collected on a rental application.

Offering opinions on all manner of alleged damage violations without consent to do so or without a Judicial decision may leave you open to complaints and liability.

### 3. Debts Owed

- a. Obtaining consent at time of collection for reporting lease violations was highly recommended as the best practice.
- b. In the PIPED Act you do not need consent for collecting a debt owed by the individual to the organization for rent owed.

(Note to reader)

Rent arrears were deemed to be a debt that could be readily proven as opposed to an allegation of damages upon move out for instance.

It was pointed out that should you disclose information about money owing for damages (unliquidated damages) to a third party

without a Judicial decision you may be sued for special damages.

### 4. Third Parties

- a. Before transferring any personal information to a third party it is advisable to obtain covenants from such parties to protect the information accordingly.

(Notes to reader)

Be aware that compliance with PIPEDA is accomplished by audit from a reputable auditing firm. You may want to adopt the practice of obtaining proof that the third party and their legal sources comply. Have they had an audit by a reputable privacy legislation legal counsel.

In transferring information for processing, you **as the Housing Provider** will also have to give yourself reasonable assurances, preferably in writing that the **Third Party complies with the PIPEDA**. Such electronic document transfer will ultimately come under the scrutiny of the act in various ways. One in particular is that the transfer of personal information files be secure using some form of encryption deemed acceptable.

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Canadian Rental Housing Industry represented.



British Columbia Non-Profit Housing Association

*"Offering opinions, and all manner of alleged damage violations without consent to do so or without a Judicial decision may leave you open to complaints and liability"*

## Application for Non-Profit and Co-op Social Housing Providers

Subject to the Act is how personal information collected by or provided to a housing provider is used such as:

1. to ascertain rent payment history for approval of an applicant or a co-op member for housing
2. to determine and confirm income and assets for rent calculation purposes subject to audit by housing provider's auditor and Service Manager staff
3. to provide information to third parties, such as ac-

- cess centers, and whoever is tracking social housing arrears, or credit bureaus
4. to ascertain service levels required in special needs housing
5. to provide information in situations where health and safety of the resident or member may be at risk (health information to firefighters, for example)
6. to provide information to Service Managers regarding income and rent paid (usually aggregate infor-

- mation without personal references such as on the AIR)
7. to provide credit or rental-history references to third parties
8. to aid in criminal investigations
9. to obtain orders for termination of tenancy (Ontario Housing Tribunal)
10. debt collection (Judicial decision recommended)

### Potential issues for social housing providers

1. ability to obtain information about past arrears to social housing providers to test for RGI eligibility
2. ability to supply information about member or resident arrears of RGI tenants so that others may obtain it to test for RGI eligibility
3. will the consent statements included in the original application suffice for the

(Continued on page 3)

(Social Housing Providers  
Continued from page 2)

- above purposes?
- what do you have to do to protect information that you collect, for example resident information that is inputted into a database program which can be accessed by staff and possibly volunteers?
  - how does a board member protect information that may be sent to his or her home electronically where others may have access to the information on the computer?

#### What the housing provider has to pay attention to:

- consent forms (contained in lease and/or application form) for collection and distribution of personal information must identify all uses
- providing members and tenants access to their own information
- uses not required eliminated
- accuracy of information collected and given out
- limiting internal access within the organization to those who need to know (waiting list creation and updates, annual reviews, provider updates)
- destroying personal information after legal requirements for retention have expired.
- appointing a privacy officer within the organization
- release of information (such as for references) where consent has not been obtained
- whether third parties are collecting and using information within legislated parameters (access centers, service managers, Tribunal, social service case workers, rent roll disclosure to auditors, Rent Check, etc.)

Moreover, it is the **Housing Provider**, and not the **Third Party**, who is legally responsible for the personal information collected from **Tenants** and subsequently disclosed to **Third Parties**. Although third party practices must comply protect yourself against possible lawsuits.

## Meeting Summary

Ms. Heather Black, Assistant Privacy Commissioner, Office of the Privacy Commissioner for Canada, assured us that the ability for housing providers to screen their applicants for rental history, credit and tenancy-worthiness and the practice of providing rental history to other landlords is recognized as an accepted and established practice throughout our industry.

At the meeting, we talked about the steps Rent Check has already taken regarding compliance with the PIPEDA. Firstly, consent language was drafted for use with a housing application when collecting personal information. Secondly, consent language was

drafted for use when a new use is identified. And thirdly, we established a prompt access procedure for individuals who request to see their files, and a comprehensive complaint response procedure. The Privacy Commission was confident that we were in good hands with our privacy legislation legal team from the law firm of Torys, namely; Bill Charnetski, Patrick Flaherty, and Jeremy Robinson whom the Commission acknowledged were held in high esteem having authored a book on the PIPEDA in 2000. This team of lawyers is responsible for drafting the above consent language.

The Privacy Commission

stressed several times that it is of utmost importance for consent language to be comprehensive respecting the many reasons why a housing provider may collect, use and disclose an applicant's personal information.



*"The Privacy Commission stressed several times that it is of utmost importance for consent language to be comprehensive..."*

## Ten Principles of Compliance

An organization is responsible for the protection of personal information and the fair handling of it at all times, throughout the organization and in dealings with third parties. Care in collecting, using and disclosing personal information is essential to continued consumer confidence and good will. Private sector organizations must follow a code for the protection of personal information, which is included in the Act as Sched-

ule 1. The 10 principles that business must follow are:

- Accountability
- Identifying Purposes
- Consent
- Limiting Collection
- Limiting use, disclosure and retention
- Accuracy
- Safeguards
- Openness
- Individual Access
- Challenging compliance.

Overall, we were impressed

with the Commission's understanding of the various social and private Housing Industry models and found it refreshing. The topics discussed were broad enough to represent the major areas of concerns, but do not encompass the full extent of the requirements for business compliance to the ten principles. We recommend the publication found below to fully comprehend your responsibilities under the PIPEDA.

## PIPEDA Information Sources

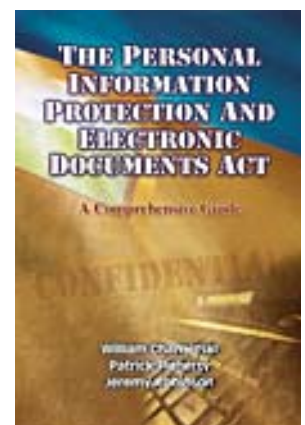
The following contacts will help answer specific queries for information with regard to the PIPEDA.

The Privacy Commission of Canada  
112 Kent Street  
Ottawa ON K1A 1H3

Telephone: 1-613-995-8210  
Toll-free: 1-800-282-1376  
Fax: 1-613-947-6850  
Website: [www.privcom.gc.ca](http://www.privcom.gc.ca)  
Email: [info@privcom.gc.ca](mailto:info@privcom.gc.ca)

Torys website:  
[www.torys.com](http://www.torys.com)

The book, The Personal Information Protection and Electronic Documents Act, (PIPEDA) A Comprehensive Guide; <http://www.canadalawbook.ca/catalogue.cfm?DSP=Detail&ProductID=602&CategoryID=30>







### Rent Check Credit Bureau

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Website: [www.rentcheckcorp.com](http://www.rentcheckcorp.com)

Email: [john@rentcheckcorp.com](mailto:john@rentcheckcorp.com)



*(Topics and Responses continued from page 2)*

In other words, while the **Third Party** will be the ultimate user of the personal information, the **Housing Provider** is responsible for its collection from the **Tenant** and its transfer to the **Third Party** for processing in a lawful manner.

Third party registries designed as repositories for rental-history data must be compliant with the PIPEDA to legally offer their services. Some registries that are designed as open and without consent discipline leave housing providers open to lawsuits.

Those in existence will need to obtain consent to continue to use the information on their files that was disclosed by housing providers without proper consent. To do so means housing providers may need to contact or attempt to contact every one of these if the service is to continue. The no grandfathering section of the PIPEDA legislates this requirement. When considering a third party such as a credit bureau, cable, or cell phone company to disclose your applicant or resident information to, make sure you use a legally compliant third party in all the aspects of use and disclosure.

### 5. PIPEDA vs. Provincial Legislation

- a. PIPEDA applies in the absence of any deemed substantially similar provincial privacy legislation right across Canada.

(Note to reader)

Quebec is currently the only province with privacy legislation that in fact goes beyond PIPEDA's requirements. Other provincial privacy legislation is not expected to be ready by January 1, 2004 therefore the federal legislation, the PIPEDA would apply.

### Commissioner's Findings

The Assistant Commissioner pointed out that there were many findings for other subjects we attempted to discuss like Social Insurance Number, that could be found on the website at [www.privcom.gc.ca](http://www.privcom.gc.ca), which has a complete history of the Privacy Commissioner's hearings and resultant findings.

## Developing Compliance

The topics addressed at the meeting pertain to Part 1 of the PIPEDA and do not include detailed aspects of the ten principles private organizations will have to comply with come January 1, 2004. Understanding the Act's compliance for your organization can best be started with purchasing a plain language book on the PIPEDA. Heather Black, then Legal Counsel to the Office of the Privacy Commissioner, kindly arranged for the Office's consent to publish the Office of the Privacy Commissioner's Guide in Appendix E, at page 225 of the book, which is easier to understand. Where to acquire the book can be found in the PIPEDA Information Sources section, page 2.

The Privacy Commission's legal counsel, Ann Goldsmith, commented that compliance plans for a business can address both the need to com-

ply with this new legislation and the need to demonstrate compliance should a complaint be made or lawsuit brought.

A business needs to address the ten principles to fully comply. This article mainly speaks to personal information collected on an application for housing.

**Step one** in developing compliance for the protection of personal information of your residents and applicants starts with defining your collection purposes.

**Step two** is to define the uses you will put the collected in-



*Saskatchewan Rental Housing Industry Association Inc. (SRHIA)*

The Association that Unites Owners and Managers to Provide a Strong Voice for the Rental Housing Industry

formation to. Unlike a third party, you are in control of these internal definitions. Once personal information leaves your organization you become liable for its collection purposes, and uses by the third party.

**Step three** disclosure, may be the most important since you lose control unless after exercising due diligence you have assurances that the third party is compliant, and follows the rules.

**Step four**, which is a prudent practice, is making electronic documents and websites secure where such personal information resides on an information database system like Property Management software, internal management applications, at a third party, or the internet while transferring data.

The preceding steps would also be part of the privacy policy that a third party would implement during its compliance development.

We encourage all Housing Providers to strive to adopt the above when designing your Privacy Policies. You can contact the author, at Rent Check Credit Bureau for inquires and further information regarding this article.

