found that BVC had not taken sufficient steps to protect the personal information.

The Commissioner determined that BVC did have a written agreement with the ERA, but it was a membership agreement only. It did not include a contract for data wiping and destruction of technology. The ERA offered these services, but it was not part of the membership fees—it was a separate agreement. BVC had failed to distinguish between the two agreements and assumed that it had contracted with the ERA for data wiping and destruction.

The Commissioner was of the view that had BVC closed the loop—examined the invoices it received from the ERA to confirm the services it had received—it would have been aware that it had been charged for pickup services and not data destruction and disposal services.

The Commissioner declined to order any specific remedy; in her view, the matter had been adequately addressed by BVC's actions subsequent to the breach. BVC agreed to conduct an independent audit of its information security practices implemented in response to this incident.

Relevance

This case sounds a cautionary note for companies that use third parties for data wiping and hardware disposal. When ensuring a valid contract is in place, confirmation of services completed, both on an administrative level (*e.g.*, invoices reflecting data wiping and hardware disposal) and a on a technical level (*e.g.*, written confirmation or certification by an IT specialist that personal information has been deleted), may be required.

In addition, a data retention policy that limits the retention of personal information to a period only as long as necessary for the fulfillment of the purpose for which it was collected will go a long way towards reducing the cost of a breach.

[1] [2013] A.I.P.C.D. No. 30.

Extending Privacy Protection Obligations to Non-profits in Alberta

Timothy M. Banks
National Lead for the Privacy and Security Practice
Dentons Canada LLP

In August, Jill Clayton, Alberta Information and Privacy Commissioner, published the second instalment[1] of her submissions to the Government of Alberta review of the Alberta *Freedom of Information and Protection of Privacy Act* [*FOIP Act*].[2] This second instalment involves technical suggestions regarding amendments to the *FOIP Act*.

One issue Commissioner Clayton focused her attention on was the application of privacy legislation to non-profit organizations—particularly, when information is shared between public bodies and those non-profits. The Commissioner wrote:

> There is an increasing movement towards citizen-centred service delivery involving cross-sectoral partners (public, private and health sectors). I am concerned that the personal information of Albertans may not be protected in situations where one of the partners is a non-profit organization that is not subject to privacy legislation.[3]

Only certain non-profit organizations in Alberta are subject to the *Personal Information Protection Act* [*PIPA*][4] when they are collecting, using, or disclosing personal information in connection with a commercial activity. The Commissioner recommends that *PIPA* be amended to apply to all non-profits.[5]

In the meantime, however, the Commissioner recommends that when non-profits are engaged in cross-sectoral activities with public bodies subject

to the *FOIP Act*, the public body should be accountable for the collection, use, disclosure, and protection of personal information.[6]

This is an intriguing suggestion. On the one hand, it could assist in lawful information sharing between the non-profit and the public body, while ensuring that there is accountability irrespective of where the information resides.

On the other hand, it could result in complicating these cross-sectoral partnerships as a result of the purpose limitation provisions of s. 33 of the *FOIP Act*. Section 33 of the *FOIP Act* prohibits public bodies from collecting personal information unless it is expressly authorized by legislation, it is for law enforcement, or it "relates directly to and is necessary for an operating program or activity of the public body."[7] Any amendment that would make a public body accountable for the information collection activities of the non-profit must be drafted carefully to avoid having the effect of limiting the legitimate collection, use, retention, and disclosure activities of the non-profit in that information, which may be different and broader than those of the public body and which could be part of the reason for the cross-sectoral partnership in the first place.

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1 Jill Clayton, Information and Privacy Commissioner of Alberta, *Making the FOIP Act Clear, User-Friendly & Practical* (Alberta: Office of the Information and Privacy Commissioner ofAlberta, 2013), <http://www.oipc.ab.ca.ws037.alentus.com/Content_Files/Files/Publications/FOIP_Review_2013_Making_FOIP_User_Friendly.pdf> ("Submissions").

2 *FOIP Act*, RSA 2000, c. F-25.

3 Submissions, *supra* note 1, p. 2.

4 SA 2003, c. P-6.5.

5 Submissions, *supra* note 1, p. 2.

6 *Ibid*.

7 *Supra* note 2, s. 33(c).