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File: 6100-0216

Michael Janigan
Public Interest Advocacy Centre
1 Nicholas Street, Suite 1204
Ottawa, ON
K1N 7B7

Dear Mr. Janigan:

As you may be aware, the Public Interest Advocacy Centre (PIAC) received a letter of finding from this Office, dated October 16, 2002, with regard to the complaint that Phillipa Lawson filed against Bell Mobility (Mobility), under the **Personal Information Protection and Electronic Documents Act** (the **Act**). She was complaining, on behalf of the Public Interest Advocacy Centre, about the information practices of Bell Mobility. She alleged that Mobility failed to bring to the attention of its customers its policy of sharing customer data with affiliates for secondary marketing purposes, and the opportunity for customers to opt-out of such disclosure practices.

Subsequent to the October 16th letter, our Office received additional information and made further detailed inquiries regarding Mobility's collection, use and disclosure practices. We have determined that it is appropriate in this instance to issue this revised letter of finding.

Mobility's Privacy Policy:

Bell Canada and its affiliates have collaboratively developed and jointly adopted a Privacy Policy (the Policy) and Privacy Code (the Code). On the first page, the Policy states that:

The Bell Privacy Policy applies to the Bell Companies including, Bell Canada, Bell Mobility, Bell ActiMedia, Bell ExpressVu, Bell Nexxia, and Bell World or Espace Bell stores.

The Policy also advises readers (on the fourth page) that its "general policy is not to provide personal information to any party outside of the Bell companies", except in the limited circumstances that are allowed within its Terms of Service. Personal information is defined, in part, as "information about your product and service subscriptions and usage". It lists the purposes for collecting personal information on the fourth page. Three of the purposes refer to marketing practices. They state:

.../2



- To understand your needs and eligibility for products and services;
- To recommend particular products and services to meet your needs;
- To develop, enhance, market or provide products and services;

Under the heading entitled 'Customer Choice', the Policy invites customers who do not want their personal information to be shared "to promote products and services", to call the number shown on their bill, or contact the company through the relevant website.

The Policy and Code are both easily accessible on the Mobility website. The Policy statement on the website was tested in a focus group, for the purposes of the EKOS study prepared on behalf of PIAC. Focus group participants felt that

"the choice was made clear. Furthermore, participants appreciated the fact that several opt-out options were presented to them with specific contact names. . . . Participants also liked the fact that the corporate family members were listed for them on the website, giving them more of a sense of control over where their information was going."

The focus group participants did raise several concerns. For example, none of them had previously been aware of the opt-out option prior to entering the session, and were unsure how it was brought to the attention of customers. Participants also felt that the company should not rely only on the Internet to provide the opt-out option, since there are many Canadians who do not have internet access (i.e., the internet should not be the only way in which a customer can opt-out).

Mobility's advice to customers

New customers of Mobility have the option of either purchasing a fixed amount of service and paying in advance ('prepaid customers'), or being billed after the fact for the amount of time that they use ('postpaid customers'). There are differences in the amount of personal information collected from prepaid and postpaid customers, and in the way in which their phone service is activated.

At activation, Mobility's postpaid customers receive a Service Agreement that lists the personal account information they have provided and the service plan & features they have selected. On the back of the Service Agreement, there are "Terms of Service". The preamble states:



"If you have any questions, please contact your local Bell Mobility dealer or call a Customer Service Representative by dialling *611 free from your Solo Monthly Cellular phone and 1 800 667-0123 from a landline phone. Or visit us at www.bellmobility.ca."

The terms of service include a Confidentiality section, and a consent clause that states:

"Bell Mobility may share your customer file with its agents, dealers, or related companies in order to promote or market new products and services to you. If you do not wish to be contacted, please notify Bell Mobility at the address listed below."

Postpaid customers are required to sign the "Service Agreement". There is a clause below the signature area indicating "I acknowledge having read and agree with, the terms and conditions on the front and included with this agreement".

If the customer activates the cellphone in a store location, this agreement is signed at the point of activation, the customer receives a copy and a second copy remains with the Dealer. If the customer activates the cellphone after purchase or has purchased it over the web or phone, they are required to call Bell Mobility and speak with a Mobility representative. The script of the postpaid activation call requires the representative to ask whether the subscriber has read and understood the Service Agreement provided with their handset. If the customer has not read the Agreement, the Mobility representative is required to advise the subscriber of the importance of reviewing the terms and conditions of service and to go through the document with the subscriber before proceeding.

All new postpaid subscribers to Mobility services also receive a welcome package included in the box with their cellphone that includes the terms and conditions under which the service is offered. These terms and conditions include a section entitled "Confidentiality", which provides that with the exception of name and address, all information provided by a subscriber is kept confidential and will not be disclosed without subscriber consent, subject to certain listed exceptions. This is the same language as the "Article 11" restriction, discussed below.

The terms and conditions also include a section entitled "Information Shared With The Bell Companies", which refers users to the *Bell Code of Fair Information Practices* and *Bell Privacy Policy* and provides a website address and toll-free telephone number to view or access these documents. This section also states that:



Bell Mobility may share your customer information with affiliated companies such as Bell Canada and Bell ExpressVu to help us identify your information, communication, and entertainment needs, and provide you with relevant information, advice and solutions. If you prefer that Bell Mobility not share your personal information among Bell companies, please visit www.bell.ca or call us at the number shown on your bill.

As the name suggests, Mobility's 'prepaid' service requires the up front purchase of a fixed amount of airtime. Unlike postpaid subscribers, there is no ongoing billing arrangement with the subscriber, and much less data is generated or collected from the subscriber.

All new prepaid subscribers to Mobility services also receive a welcome package included in the box with their cellphone that includes the "Terms of Service". This package varies somewhat from the postpaid welcome package.

The Terms of Service provided with prepaid plans include a section, entitled "Confidentiality" that outlines Mobility's terms of service. In introducing these provisions, the document indicates:

"If you have any questions, please contact your local Bell Mobility dealer or call a Customer Service Representative by dialling *611 free from your Solo Monthly Cellular phone and 1 800 667-0123 from a landline phone . . . , or visit us at www.bellmobility.ca."

The Terms of Service also have a section entitled "Privacy", which makes reference to the Bell Customer Privacy Policy and notes that this latter document can be viewed by visiting the privacy policy page at www.bell.ca or accessed by calling a toll-free number. The Terms of Service also have a section entitled "Consent" which states:

"Bell Mobility may share your customer file with its agents, dealers, or related companies in order to promote or market new products and service to you. If you do not wish to be contacted, please notify Bell Mobility at the address listed below."

While prepaid subscribers are not required to sign service agreements, the script of the prepaid activation call requires the representative to:

"Ask the customer if he/she has read and understood the service agreement" and to advise the customer that "by activating the phone, they agree to the terms & conditions".



A representative of our Office dialled the 1-800 number noted above, was connected to an operator in less than 3 minutes, and was easily able to arrange to have his name placed on the list of customers who do not want to be contacted regarding new products and services.

Mobility's disclosure and marketing practices

Bell Mobility (Mobility) is subject to a decision of the Canadian Radio-television and Telecommunications Commission (CRTC) commonly referred to as the Article 11 restriction. It prohibits Mobility from disclosing the confidential personal information of customers to third parties, without *written* customer consent¹, except in very limited circumstances. The decision is reflected in Mobility's Terms of Service, which are provided to customers at the time they subscribe to the service, or are available on its website. They state:

With the exception of your name and address, all information you've shared with us is considered confidential and will not be disclosed by us to anyone other than you or:

- a person who in the reasonable judgement of Bell Mobility is acting as your agent;
- another telecommunications service provider, on a confidential basis, and provided the information is to be used solely to offer efficient and cost-effective establishment or provision of telecommunications services, and disclosure is made on a confidential basis with the information to be used only for such purposes;
- upon your request, to any person providing a directory assistance or listing service, provided that disclosure of information other than your name, address and listed phone number is made on a confidential basis with the information to be used only for such purposes;
- an agency regarding collection and credit performance or other administrative functions, provided the information is released only for such purposes;
- a law enforcement agency whenever Bell Mobility has reasonable grounds for believing that you have knowingly supplied Bell Mobility with false or misleading information or that you are involved in unlawful activities directed against Bell Mobility.

Bell Mobility manages its own billing system & customer database including subscriber name, contact information, account and credit information (such as the identifying information that is supplied when an account is first opened, e.g. driver's licence number,

¹ As you are aware, the CRTC has subsequently released Telecom Decision CRTC 2003-33. The decision requires telecommunications companies to obtain 'express' consent, and sets out several methods by which such consent can be obtained.



passport, etc.), product and service usage and transactional information, as well as customer complaint information. This information is never disclosed to an affiliate for its use in marketing campaigns.

Bell Canada provides corporate services such as data analysis and marketing to most of its affiliates, including Mobility. As a matter of due diligence, each affiliate has a contractual agreement with Bell Canada for the non-disclosure of customer information. Our Office examined these contracts, and was satisfied that they provide appropriate security and protection of the personal information of Mobility customers.

Bell Canada manages a centralized database, the 'Enterprise Data Warehouse' (EDW). Each of Bell's affiliates, including Mobility, feeds information into the central database on a regular basis. The information that is provided includes items such as customer name, address, account number, home telephone number, method of payment, date account established, and consent indicator code. Access to the EDW is controlled. The access of each of the affiliates is restricted to a 'view' of its own data. There are a limited number of marketing and IT staff of Bell Canada who can access the entire database, and they must have password privileges. Each of the staff who has open access is required to sign Bell Canada's Code of Ethics on an annual basis. The Code includes a confidentiality provision.

Mobility's use of personal information

Mobility advises that like all Bell affiliates, it has key matrices or targets that it has to meet. Bell Canada uses the data in the EDW system to support Mobility in achieving its productivity targets. Mobility's markets are principally in Quebec and Ontario, and it has recently expanded to British Columbia and Alberta.

Most of the marketing activity directed towards Mobility's *existing* customer base is for retention and revenue stimulation including the promotion of new plans and features that enhance wireless use. Mobility uses various techniques to attract *new* users: mass communication (i.e., mailings, television, radio, and print ads), in-store advertising (signage, tear-sheets, brochures), telemarketing and direct mail. It purchases lists from Dunn and Bradstreet Info Canada, and other list brokers through its advertising agency. Bell Mobility also gets lists from Bell Canada's Database Marketing group, who provide name, address and phone number information for Bell Canada customers excluding customers with non-published numbers or with a "do not solicit" flag on their account.



Bell Canada's Database Marketing staff and Bell Mobility's Database Marketing staff use the EDW to develop algorithms that identify potential markets (i.e., clients most likely to purchase a product). For example, the database was used to identify recent Bell Mobility customers and analyze what their Bell Canada wireline profile was prior to activation of the Mobility phone. A statistical model was then developed to identify non-Mobility Bell Canada wireline customers whose profiles looked similar to the recent Mobility purchasers, and who therefore had a higher propensity to purchase a Mobility phone. This data was then used to prioritize the telemarketing list provided to Mobility for new activation campaigns by identifying customers with a higher likelihood to purchase. Although the detailed Bell Canada wireline information was used to develop the model, the Bell Canada Database Marketing staff only provided name, address & contact information on the list to Bell Mobility, in order to comply with Article 11. The information that is disclosed cannot be used to draw conclusions about the particular services that a wireline customer purchases.

In another example, the database was used to identify Bell customers who have voice mail on both their wireline and wireless (Mobility) systems. Bell Canada developed a 'Just One' mailbox system that has been marketed to this group of customers.

Mobility and Bell ExpressVu have put advertisements for each other's products in their mail-outs to their own customers. Mobility has also inserted an advertisement for Sympatico in its mail-out. Although Mobility could disclose its customers' names and addresses to a Bell affiliate to allow that affiliate to market its own products to Mobility customers (and still comply with the Article 11 restriction), it had not done so, at the time of our investigation.

Conclusion

On the basis of these facts, I am required to determine whether Bell Mobility is in compliance with Principles 4.2.3, 4.3, 4.3.2, and 4.3.4 of Schedule 1 to the **Act**. In this case, where the central issue is consent, I must also take due account of Principle 4.3.5 in my deliberations.

Principle 4.2.3 states that identified purposes should be specified at or before the time of collection to the individual from whom the personal information is collected. Principle 4.3 states that the knowledge and consent of the individual are required for the collection, use, or disclosure of personal information, except where inappropriate. Principle 4.3.2 elaborates on the meaning of knowledge and consent. It requires organizations to make a reasonable effort to ensure that the individual is advised of the purposes for which the information will be used. To make the consent meaningful, the



purposes must be stated in such a manner that the individual can reasonably understand how the information will be used or disclosed. Principle 4.3.4 states that the form of the consent sought by the organization may vary, depending upon the circumstances and the type of information. It requires organizations to take into account the sensitivity of the information, in determining the form of consent to use. Principle 4.3.5 states that, in obtaining consent, the reasonable expectations of the individual are relevant.

I will begin by stating that our Office continues to consider PIAC's expectations regarding consent to be entirely reasonable and in keeping with the **Act**. First and foremost, we note that Principle 4.2.3 clearly supports the expectation that an organization should not merely make policy documents generally available, but should actually *bring to the attention* of the individual its purposes for collecting, using, and disclosing personal information. When an organization collects personal information during an application, subscription, or purchasing process, it should take reasonable steps *during the same process* to specify to the individual, and seek the individual's express consent for, any intended secondary uses or disclosures.

I also consider it only reasonable for the individual to expect to be informed, likewise during the same process, of the opportunity and a convenient method for opting out.

Finally, where an organization intends to disclose personal information that the individual is likely to consider sensitive, I consider it reasonable for the individual to expect to be consulted directly and positively in the matter of consent.

Mobility is subject to CRTC's Article 11 restriction, and does not *disclose* without written consent the confidential personal information of its customers to third parties or to affiliates for their use in marketing products to Mobility customers.

Mobility *uses* customer information to develop and market products, including the products of Bell affiliates, to its customer base. Where Mobility purchases marketing and data analysis services from Bell Canada, it protects the confidentiality of customer information through agreements for service with Bell Canada. It also *collects* some personal information in its own, separate database that is used to establish and maintain the business relationship with a client. Some of the information that it collects is highly sensitive, for example, the customer's identifying information (SIN, driver's licence, passport number, etc.) and record of complaints. This information is not used in marketing campaigns.



I have concluded that Mobility makes a reasonable effort to advise its customers of the purposes for which the information it collects will be used, as required by Principle 4.3.2. It gives each new subscriber a welcome package containing documents that outline its privacy practices and policy. These are also posted on its website. Each of the documents clearly states that Bell and its affiliates collect and use customer information to develop and market products. When a Mobility representative assists a new customer with activation of his or her phone service, the representative brings the Service Agreement to the attention of the new client.

As required by Principle 4.3, Mobility obtains the consent of its customers for its *collection and use* practices at the time the customer first subscribes to wireless services. Postpaid customers sign a service agreement acknowledging that they have read and agree with the terms and conditions of service. Prepaid customers receive a prompt from a call centre operator when they activate their service.

In my view, Mobility's choice of implied consent for its collection and use practices is consistent with the requirements of Principle 4.3.4 of Schedule 1 of the **Act**. Its privacy policies provide sufficient detail to make an informed choice, and are brought to the attention of the individual. The opt-out provision for secondary uses is easy to execute with minimal effort. A customer can opt-out via the 1-800 number, the local office number on the bill, or the web site.

I find, therefore, that Mobility's policies and practices with regard to obtaining consent for the collection, use, and disclosure of personal information for the secondary purpose of marketing meet the reasonable expectations of its customers, as per Principle 4.3.5 of Schedule 1.

Accordingly, I conclude that this complaint is not well-founded.

Now that you have my report, I must inform you that, pursuant to section 14 of the **Act**, you have the legal right to apply to the Federal Court, Trial Division, for a hearing in respect of any matter that you complained about or that I have dealt with in my report, and that is referred to in clause 4.1.3, 4.2, 4.3.3, 4.4, 4.6, 4.7 or 4.8 of Schedule 1, in clause 4.3, 4.5 or 4.9 of the Schedule as modified or clarified by the *Act*, in subsection 5(3), or 8(6) or (7) or in section 10.

Should you wish to proceed to the Court, we suggest you contact the Trial Division of the Court office nearest you. It is located at the Supreme Court Building, Kent & Wellington, Ottawa, Ontario, K1A 0H9, Telephone: (613) 992-4238. Normally, an application must be made within 45 days of the date of this letter.



You should also be aware that the Court has discretion to order that the costs of the other party be paid by you where the Court is of the view that this is appropriate. While this does not happen often, it is a possibility of which you should be aware. Conversely, the Court may order that your costs be paid where the Court finds, for instance, that your application raises an important issue or one of public interest.

This concludes the investigation of the complaint. If you have any questions or comments about the disposition of the complaint, I would invite you to contact Mr. Gerald Neary, Director General of Investigations and Inquiries at 1-800-282-1376.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Heather Black', with a long horizontal flourish extending to the right.

Heather Black
Assistant Privacy Commissioner