



Mr. Edward Hasbrouck
1130 Treat Ave.
San Francisco CA
94110
U.S.A.

APR 23 2015

PROTECTED B

Our File: PIPEDA-031664

Dear Mr. Hasbrouck:

Re: Report of Findings

Please find attached the report of findings prepared by this Office with regard to the complaint you filed against Air Canada under the *Personal Information Protection and Electronic Documents Act* (the "Act"), which we accepted on March 6, 2014.

Following the investigation into your complaint, we have concluded that the matter is **well-founded and resolved**. For details on the investigation and the rationale for our conclusion, please see the attached report of findings.

Now that you have our report, I must inform you that, pursuant to section 14 of the Act, you have the legal right to apply to the Federal Court of Canada (the "Court") if you wish to pursue this matter any further.

Should you wish to proceed to Court, we suggest you contact the Court office nearest you. Normally, an application must be made within 45 days of the date of this letter. If you file your application with the Federal Court, you must serve the Privacy Commissioner of Canada with a copy of the application within 10 days, pursuant to rule 304(1)(c) of the *Federal Courts Rules*. For additional information on Federal Court applications, please check the Fact Sheet, Application for Court Hearings under PIPEDA, found on our Office's Web site at http://www.priv.gc.ca/resource/fs-fi/02_05_d_31_e.asp.

This concludes our Office's investigation of your complaint. If you have any questions or comments about this letter, I would invite you to contact Jolana Klobouk, Senior Privacy Investigator, at 1-800-282-1376.

Sincerely,

Brent Homan
Director General
PIPEDA Investigations

Attachment

Report of Findings

Our File PIPEDA-031664

APR 23 2015

Complaint under the Personal Information Protection and Electronic Documents Act (the “Act” or “PIPEDA”)

Overview

An individual requested from Air Canada detailed access to his personal information, as well as his personal information collected or used by, or disclosed to, various third parties — all relating to his air travel with Air Canada. Not satisfied with Air Canada’s delay in providing him with access or with the completeness of the access he received, he filed a complaint with our Office.

Our investigation determined that Air Canada responded to the complainant’s access request in a fulsome manner, albeit after the time limit specified by PIPEDA.

Therefore, we considered the matter to be well-founded and resolved.

Summary of Investigation

1. The complainant was a passenger on two Air Canada/Jazz Air LP (“Air Canada”) flights on October 14, 2011: from Boston to Montreal and from Montreal to Brussels, respectively. These two flights were part of the complainant’s more extensive journey completed between October 14 and October 29, 2011, where Air Canada was not the only carrier involved. The complainant had purchased his ticket for the entire journey from an online travel agency.
2. On September 12, 2012, the complainant requested access to his personal information from Air Canada, relating to all flights in his journey in October 2011, and including information provided to various other third parties. Specifically, he requested the following:

data collected, maintained, accessed, processed, or disclosed to third parties by your company or by any of your agents (including but not limited to your agent [...] for AC as principle in the execution of my most recent contract of carriage with Air Canada) sub-agents, contractors, and subcontractors, including computerized reservation systems, PNR hosting companies, codesharing, alliance, other “partner” airlines, or other

parties. This request includes all information held by you (or on your behalf) concerning flights operated by other airlines but for which tickets were issued by AC as the "validating carrier".

3. On November 1, 2012, Air Canada replied to the complainant by email, acknowledging receipt of his access request on September 26, 2012, and advising him that Air Canada's response was in the process of being compiled. In turn, the complainant responded that he did not agree to any undue delay, noting that Air Canada had already exceeded the 30-day deadline as prescribed by PIPEDA.

Access request and Air Canada's response

4. On November 15, 2012, Air Canada provided its response to the complainant's access request.
5. In his access request, the complainant had asked Air Canada to provide him with access to fourteen items, which we list below. Following each item, we indicate Air Canada's response to him:

- i. **Airline hosting and travel agency Passenger Name Records (PNRs)**

Air Canada provided his PNRs for the two flights on October 14, 2011. Air Canada advised the complainant that it could not provide him with the PNRs for the return flights as these flights were operated by a different airline and Air Canada does not have access to other airlines' PNRs or information held by the online travel agency that the complainant booked with.

- ii. **PNR histories**

For the reasons given above Air Canada advised that it does not have access to this information.

- iii. **Cancelled PNR's and their histories**

Air Canada informed him that it does not have any records of cancelled PNR's related to the complainant.

- iv. **Archived or purged PNR's and their histories**

Air Canada provided the complainant his "purged" ticket for the flights of October 14 and October 29, 2011.

- v. **System logs of access to these PNR's and PNR histories, including any records of retrieval or other access to his PNR or other data by airline or CRS offices or travel agencies, and including records of what data was accessed, by whom, when and from where (including whether such access was made from outside Germany of the EU)**

Air Canada advised that its system does not track consultations of a PNR record, only actual transactions are recorded.

vi. **Departure control system records and access logs**

Air Canada provided the complainant the Departure Control System Records (DCS) for the Air Canada flights on October 14, 2011. Air Canada reiterated to the complainant that it does not have access to records from other airlines or travel agencies, nor does its system track consultations of PNR for DCS records.

vii. **Advance Passenger Information (API) records and logs**

Air Canada advised that it only transmits rewards and logs to, or requests them from, countries which require it. Air Canada advised that Canada does not require API for flights departing Canada and that Belgium does not require it for flights landing in Belgium. Air Canada stated that, therefore, it had no rewards or logs from the complainant's flights in question.

viii. **AIRMP, EDIFACT, or other message records**

Air Canada informed him that these types of messages are not kept as archives and therefore did not exist.

ix. **Ticketing records including complete virtual coupon records or ticket images**

Air Canada provided the complainant a copy of the electronic ticket.

x. **Bank Settlement Plan (BSP), Airline Reporting Corporation (ARC), interline or other settlement records**

Air Canada explained that it would not provide this information as these records were not personalized to passenger name but rather only to ticket numbers and that they therefore did not contain his personal information.

xi. **Credit card processing, financial, billing or payment records**

Air Canada advised that it did not have access to that information but that a partial credit card number appeared on the electronic ticket, as provided above.

xii. **Frequent flyer account records**

Air Canada provided the complainant with a copy of his Aeroplan record that was created on April 10, 2007, and canceled on April 15, 2008. Air Canada explained that it does not have access to the complainant's frequent flyer record for the carrier of his other flights in October 2011.

xiii. **Customer, web user of traveler records or profiles**

Air Canada explained that since his travel was booked through an external travel agency and through the Global Distribution System (GDS), it does not have access to PNRs which are held independently of Air Canada. The historical PNR which it provided above is the only record it could provide.

xiv. **Web site visitor, usage and query records and logs, including all records of which his PNR, profile, or other personal data was accessed via airline, CRS, or travel agency web sites (including via online reservation management, check-in, or PNR-viewing sites, and including but not limited to virtuallythere.com, viewtrip.com, mytripandmore.com, and/or checkmytrip.com), including by whom, when and from where (including whether such access was made from outside Canada.)**

Air Canada reiterated to the complainant that it does not have access to his personal information as held by third-party Web sites, travel agencies, airlines, government agencies or code shares.

6. At the time, Air Canada also provided the complainant with a copy of its *Privacy Protection Policy*, as he had requested.
7. Following subsequent communication with the complainant, on November 23, 2012, Air Canada informed him that it had inadvertently omitted some information from its first response to him. It explained that the complainant's flight segment from Boston to Montreal involved API information that had been transmitted to Canada Border Services Agency (CBSA). At the same time, Air Canada also confirmed to the complainant that CBSA would have had access to the complainant's PNR data, as required by legislation. Air Canada also confirmed that the United States Customs and Border Protection (CBP) require this information for all outbound flights.
8. On November 28, 2012, Air Canada advised the complainant that it could not provide him with a copy of the API records as they are not kept longer than six months and, thus, were no longer available.
9. The complainant continued to remain unsatisfied with Air Canada's response and alleged that it had provided him with a late, incomplete and inaccurate response and, as such, he filed a complaint with our Office, which we accepted on March 6, 2014.
10. In his complaint, he purported that although he had made repeated requests, Air Canada failed to inform him of any industry or other bodies to whom he could make a complaint other than our Office. In addition, he alleged that Air Canada had failed to provide him with access to his personal information as held by third-party agents of Air Canada, and that it also failed to provide a complete list of all organizations to whom his information may have been disclosed.

Application

11. In making our determinations, we applied Principles 4.9, 4.9.1 and 4.9.3 of Schedule 1, as well as subsections 8(3) and 8(5) from Part 1 of the Act.
12. Principle 4.9 states that upon request, an individual shall be informed of the existence, use and disclosure of his or her personal information and shall be given access to that information. An individual shall be able to challenge the accuracy and completeness of the information and have it amended as appropriate.
13. Principle 4.9.1 stipulates in part that upon request, an organization shall inform an individual whether or not the organization holds personal information about the individual. Organizations are encouraged to indicate the source of this information. The organization shall allow the individual access to this information. In addition, the organization shall provide an account of the use that has been made or is being made of this information and an account of the third parties to which it has been disclosed.
14. Principle 4.9.3 states that, in providing an account of third parties to which it has disclosed personal information about an individual, an organization should attempt to be as specific as possible. When it is not possible to provide a list of the organizations to which it has actually disclosed information about an individual, the organization shall provide a list of organizations to which it may have disclosed information about the individual.
15. Subsection 8(3) states that an organization shall respond to a request with due diligence and in any case not later than thirty days after receipt of the request.
16. Subsection 8(5) stipulates that if an organization fails to respond within the time limit, the organization is deemed to have refused the request.

Findings

17. At issue is whether Air Canada provided the complainant with complete access to his personal information in accordance with the access provisions of PIPEDA.
18. The complainant requested his personal information from Air Canada. It stated that it received the request on September 26, 2012. Air Canada did not respond until November 1, 2012 and informed the complainant that it was gathering the information and would be sending its response within two weeks. It did so on November 15, 2012. It therefore failed to respond within the 30-day time limit stipulated under subsection 8(3) of the Act. Consequently, in accordance with subsection 8(5), Air Canada is deemed to have refused the request.
19. While Air Canada failed within a few days to meet the legislated 30-day time period, it subsequently responded again to the complainant within two weeks and without any intervention required by our Office to complete its response. The complainant, however, remained unsatisfied with the completeness of Air Canada's response. On

this particular matter, we disagree with the complainant for the reasons that we explain below.

20. In the first place, our Office reviewed the response provided by Air Canada and the ensuing correspondence between Air Canada and the complainant. The complainant specifically maintained that Air Canada did not provide him with access to his information as held by third-party agents, such as external travel agencies, subsidiaries, affiliates, code share partners, ground handling agents, government agencies, etc. For its part, Air Canada advised our Office that in the course of a passenger's journey, Air Canada may be assisted by employees of third parties engaged by Air Canada (for example, to provide customer service).
21. Our Office has determined previously that these third-party service providers to which an organization has contracted out particular services are considered to be under the control of the organization¹.
22. However, Air Canada explained to the complainant and to our Office that while certain other external third parties involved in the handling of the complainant's personal information in this case may be associated with Air Canada's operations, they are not under its control; Air Canada is thus not able to provide access to the information that these parties collected. Exceptionally, Air Canada advised the complainant that it had disclosed the complainant's personal information to CBSA and USCBP, which are not under its control. This disclosure is prescribed by the Secure Flight Program developed by the US Transportation Security Administration.
23. With specific regard to the complainant's rights to access under PIPEDA, our Office noted that the Act applies to the personal information that an organization "holds" (Principle 4.9.1).
24. Thus, in our view, Air Canada provided the complainant with complete access to his personal information that was held by Air Canada and by parties under Air Canada's control. As for the personal information requested that was not held by Air Canada, request for access must be made with those parties directly.
25. In the second place, the complainant's further concern was that Air Canada did not provide him with an accurate list of all organizations to which Air Canada disclosed or may have disclosed his personal information. In this regard, Principle 4.9.3 states that the account it provides to individuals should be "as specific as possible" and, where it is not possible to provide a specific list of organizations to whom information was disclosed, an organization must "provide a list of organizations to which it might have disclosed information."
26. Air Canada confirmed to our Office — as it had previously informed the complainant — that the only disclosures it was able to confirm were to the CBSA and USCBP. In

¹ https://www.priv.gc.ca/cf-dc/2007/377_20070405_e.asp

addition, we noted that Air Canada's Privacy Policy (that was provided to the complaint and is available online) gives further examples of other circumstances where personal information may be disclosed.

27. Air Canada's privacy policy also describes how Air Canada uses information and that Air Canada may outsource some of its services, such as ground handling, on its behalf to a third party service provider. The privacy policy explains how this transfer of information is protected by contractual and other means.
28. In fact Air Canada advised our Office that it engages a third party contractor, Swissport International Ltd. ("Swissport"), to act as Air Canada's agent in Brussels for ground handling. Swissport employees working on behalf of Air Canada may have handled the complainant's baggage but Air Canada clarified that the passenger information used by Swissport is on the airline's behalf and that such information remains under the control of Air Canada.
29. Air Canada's Privacy Policy further provides the following explanation of the circumstances of personal information disclosures and parties to whom that information may be disclosed:

Limiting Use, Disclosure and Retention

Air Canada will not use or disclose your personal information for purposes other than those for which it was collected without your explicit consent or as required by law. You should understand that all airlines, including Air Canada, are required by new security laws in the U.S. and several other countries to give border control agencies access to passenger data. Accordingly, any information we hold about you and your travel arrangements may be disclosed to customs and immigration authorities of any country in your itinerary.

We may also disclose your personal information:

- as required by law, such as to comply with a subpoena, or similar legal process
- when we believe in good faith that disclosure is necessary to protect our rights, protect your safety or the safety of others, investigate fraud, or respond to a government request,
- if Air Canada is involved in a merger, acquisition, or sale of all or a portion of its assets, you will be notified via email and/or a prominent notice on our Web site of any change in ownership or uses of your personal information, as well as any choices you may have regarding your personal information,
- to any other third party with your prior consent to do so.

30. Overall, Air Canada's responses to the complaint and the relevant portions of its privacy policy, which was sent to the complainant, ultimately satisfy Air Canada's obligations under PIPEDA to access under Principles 4.9, 4.9.1 and 4.9.3.

Conclusion

31. Accordingly, we conclude that the matter is **well-founded and resolved**.

Other

32. The complainant also requested that our Office compel Air Canada to make the necessary changes in their systems and those used by its third party agents to keep access logs. Our Office did not address this issue as there is no requirement under PIPEDA for an organization to provide a list of access logs or access privileges.
33. The complainant also stated in his complaint that he made repeated, explicit requests to Air Canada to inform him of any industry or other bodies to which he could make a complaint concerning these issues, and that Air Canada only mentioned to him the Office of the Privacy Commissioner. Our review of the facts revealed that Air Canada had provided the complainant with the name and contact of its privacy officer, a copy of its privacy policy as well as information on how to contact our Office. As our Office is the applicable authority to handle such complaints under PIPEDA, we believe that Air Canada's response to the complainant was appropriate.