



News Release

02 April 2007
Ottawa, ON

Privacy Commissioner Finding Raises Concerns about Foreign Outsourcing

In a finding issued today, the federal Privacy Commissioner concluded that SWIFT, an international organization through which Canadian and other banks process international banking transactions, did not breach Canadian privacy law by complying with U.S. subpoenas for data that likely included personal banking information of Canadians. Similarly, the Commissioner found that Canadian banks did not breach the law by allowing SWIFT to disclose personal data of their customers to the U.S. in response to the American subpoenas.

Privacy advocates filed complaints with the Privacy Commissioner last year after the disclosure of banking information by SWIFT to the U.S. Treasury hit the news. Some European data protection commissioners have since concluded that SWIFT violated their national data protection laws by secretly disclosing this information to the U.S. for anti-terror intelligence purposes. SWIFT, EU officials and US officials have been engaged in talks for months in an attempt to resolve the issue.

“While we are happy that the Commissioner treated this issue seriously and found that international organizations must comply with Canadian privacy laws when they collect personal information from Canada, we think that this finding raises serious concerns about foreign outsourcing.”, said Philippa Lawson, Director of the Canadian Internet Policy and Public Interest Clinic (CIPPIC).

“It creates – or perhaps confirms – a huge loophole in our data protection regime: Canadian companies are allowed to outsource data to foreign entities regardless of the regime under which the outsourced data processing takes place and regardless of the consequent risks to individual privacy”.

CIPPIC filed complaints last July against all six major banks, alleging that they breached their obligations under Canadian privacy law by allowing SWIFT to make the disclosures in question.

The Commissioner found that Canadian banks were compliant with the law because they required the outsourcing agent to take proper security and privacy precautions, and because they clearly notified their customers of the fact that their data could be outsourced to other countries. According to the Commission’s finding, nothing in the law prevents Canadian companies from outsourcing to foreign-based services providers. Moreover, the law expressly permits organizations to respond to lawfully issued subpoenas.

“This is an issue that is not going to go away”, said Lawson. “As we continue the trend toward a more global marketplace, we can expect to see more and more outsourcing of data processing to foreign countries whose privacy laws are not as strong as ours. Private companies should not be able to make an end-run around Canadian privacy laws in this manner. It’s time to address this issue head on, and I’m disappointed that the Privacy Commissioner did not take this opportunity to do so.”

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