

May 5, 2026

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Delivered by email: CITZ.Minister@gov.bc.ca

Honourable Diana Gibson
Minister of Citizens' Services
PO Box 9068 Stn Prov Govt
Victoria BC V8W 9E2

Re: Joint Investigation of OpenAI Report of Findings

Dear Minister Gibson,

My office, along with our counterparts at the Offices of Privacy Commissioner of Canada (OPC), the Commission d'accès à l'information du Québec, and the Office of the Information and Privacy Commissioner of Alberta have completed a report on our joint investigation of OpenAI OpCo, LLC. The investigation focussed on ChatGPT and the underlying models that power it (i.e., GPT-3.5 and GPT-4, excluding recent releases).

Our investigation sought to determine whether OpenAI was compliant with BC's *Personal Information Protection Act* (along with the respective acts for Quebec, Alberta, and federally) on a number of issues, such as whether it:

- Collected, used, and disclosed personal information for reasonable purposes, and limited collection to only what was necessary for those purposes;
- Obtained consent for collection from individuals in Canada, including BC; and
- Fulfilled its obligations with respect to openness, accuracy, access to personal information, retention and disposal, and accountability for the personal information under its control.

The investigation concluded that OpenAI contravened the *Personal Information Protection Act* in all but one of the 13 issues we investigated. Namely, we found that OpenAI's collection of personal information from internet sources and third parties for the purpose of training its GPT-3.5 and 4 models, as well as the scale and nature of the personal information collected and used from those sources, was overbroad and inappropriate. Further, we found that OpenAI

should have obtained express consent for its collection, use and disclosure of personal information via ChatGPT, and did not.

Since the start of the investigation, OpenAI made several changes including but not limited to:

- Deprecating (i.e., retiring) its GPT-3.5 and 4 models;
- Implementing a filtering tool to mask a wide range of personal information about private individuals collected from publicly accessible internet data and in licensed datasets, limiting its use in pre-training OpenAI's models, ensuring that models do not learn from that data;
- Making other changes to address concerns around accuracy, correction, access to and retention of personal information;
- Committing to further communications to explain its privacy practices and the sources of information used to train its models; and
- Committing to provide the Offices with quarterly reports to confirm and demonstrate compliance with the agreed upon commitments.

As a result of mitigation measures and the notion that public awareness regarding Artificial Intelligence and Large Language Models has evolved since the launch of ChatGPT, the OPC considers the issues under investigation to be conditionally resolved. However, both my office and my counterpart in Alberta find this issue is not resolved, as OpenAI's newer models are still based on scraped data for which OpenAI has not obtained, and cannot obtain, consent under our respective *Personal Information Protection Acts* (PIPA).

While PIPA allows for implicit consent, it is limited to circumstances where an individual voluntarily provides their personal information to a particular organization (or posts online) for specific and obvious purposes.

In a previous letter to you and Minister Glumac, I stated that I believe PIPA's consent provisions are no longer well suited to the realities of today's data-driven world. Societal expectations about artificial intelligence or the organization's steps to mitigate risks to privacy have moved outside the scope of what the current legislation reasonably allows. As such, the report finds that PIPA does not enable OpenAI to establish implicit consent. Therefore, while OpenAI's actions to address risks to personal privacy supported the OPC's determinations with respect to implied consent, those actions are not sufficient to establish implicit consent under PIPA.

In the same letter to you and Minister Glumac, I raised the notion of introducing a "legitimate interest" exception, which would allow organizations to process personal information without consent if they can demonstrate a legitimate interest that outweighs any potential adverse effects on individuals. I believe the investigation finding that OpenAI cannot reasonably obtain consent is an example of where this type of exception could be explored to better address today's data processing norms. This would bring our consent regime in line with modern

benchmarks set in comparable jurisdictions and would be consistent with our understanding of where the federal government is likely headed.

As such, I would like to reiterate my request that the Province consider, among other items discussed in my November letter, PIPA reform that includes an exception for legitimate interest processing. That said, my advocacy for statutory reform to introduce alternative means of legal authorization for data collection, use (including secondary use) and disclosure should not be interpreted to be an argument for liberalization of the data protection regime in the favour of businesses. Instead, as I have argued before, this reform must be done in concert with a rehabilitation of the consent model for legal authorization, where consent is an appropriate and feasible means of legal authorization. And where new legal authorizations are introduced, they should be accompanied by guardrails, including requirements for data governance within organizations that would scale according to the impact of the use and potentially include no-go uses; and strengthened independent oversight, including but not limited to the Commissioner's authorities to compel and review documents and enforce the law. A comprehensive provincial statutory reform agenda should also include consideration of human rights.

There is a clear and pressing need to reform the law so technology advances in a way that protects our values. Statutory reform such as this is best accomplished with broad and transparent social engagement. PIPA requires that, at least once every 6 years, a special committee of the Legislative Assembly review PIPA and submit a report to the Legislative Assembly within one year of their appointment. I encourage your government to consider advancing the timing of this review so we can move forward on this shared priority. My office stands ready to provide support to a statutory reform effort.

Please note that we intend to publish the report of our joint investigation into OpenAI tomorrow morning. I also intend to publish a copy of this letter concurrent with the report.

Sincerely,



Michael Harvey
Information and Privacy Commissioner
for British Columbia

cc: Honourable Rick Glumac, Minister of State for AI and New Technologies