Office of the Information & Privacy Commissioner for British Columbia

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INVESTIGATION REPORT P19-01

Full Disclosure:
Political parties, campaign data, and voter consent

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for British Columbia

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COMMISSIONER'S MESSAGE

This investigation commenced in the wake of several complaints registered with my office about how political parties treat their personal information.

Recent news has also focussed the public's attention on the misuse of personal information for political campaigning. Cambridge Analytica's manipulation of Facebook data to psychologically profile US voters is one example that sent shockwaves around the world.

We do not wish such events to wash ashore in British Columbia. However, it is important to recognize the rapid advancement of technological tools to profile and micro-target voters and the temptation for political parties to deploy them. The risks these developments could pose for BC's citizens and our democratic system of governance are significant.

It is for this reason that now is the time to shine a spotlight on these challenges before our political parties go too far down this road.

This investigation report sets out the present state of affairs in BC. My investigators examine what personal information BC's three main political parties collect from the province's 3.3 million registered voters, and what they do with it. Some may be surprised by how much information they collect and how they use it. I consider whether this is consistent with existing personal information protection law. I also recommend steps that can assist all parties going forward and further enhance privacy protection and public confidence in our system of political campaigning.

The issues this report raises are complex because they require consideration of many important interests. On the one hand, a functioning democracy necessitates that political parties understand the aspirations of voters in order to effectively communicate with them. Part of that process involves parties gathering personal information about the citizenry. On the other hand, there are rules in place about how far parties can go in collecting, using and disclosing the personal information of individuals.

These two interests are not inherently at odds when a political party clearly explains to a voter why they are collecting their personal information and how they intend to use it.

My office has been given authority by the Legislature to reconcile these interests. Such oversight occurs elsewhere in the world as well. Most recently, the Information Commissioner in the United Kingdom released a report on how UK political parties handle the personal information of its citizens. In Canada, however, British Columbia stands alone in regulating the privacy practices of political parties. This is a failing my colleagues and I have called on legislators across the country to correct.

The findings and recommendations in this report aim to protect citizens by improving the privacy management practices of all parties in the province, whether represented in the Legislature or not.

It is important that these findings and recommendations not be viewed in isolation. British Columbia's Chief Electoral Officer has the wide-ranging responsibility for the conduct and administration of provincial election matters. A number of the issues raised in this report are best accomplished by coordination between our two offices. BC's Chief Electoral Officer is of the same view, and I look forward to working with his office.

Finally, I thank all three political parties that are the subject of this report for their cooperation. This investigation is the start of a series of steps my office intends to take with them and all political parties in BC.

I trust this investigation report will further strengthen privacy protections for citizens and enhance confidence in BC's political campaigns.

Michael McEvoy
Information and Privacy Commissioner for BC
February 6, 2019

EXECUTIVE SUMMARY

This report examines how the BC NDP, Green, and Liberal Parties manage the personal information of British Columbians. These parties were chosen because they were the only parties that requested the entire voters lists from Elections BC in the last provincial election.

The *Personal Information Protection Act* (PIPA) requires organizations, including political parties, to only collect, use, or disclose information about an individual if the individual has given consent. The investigation found that political parties are generally collecting too much information from potential voters, without getting proper consent.

The parties use a number of approaches to collect personal information about voters. A traditional approach is direct contact through door-to-door and telephone canvassing. When a canvasser identifies their role and why they are collecting information, the party can collect personal information voluntarily provided for that purpose. They should not, however, collect additional information by observation, nor should they collect information about other people in the household.

Another common way that parties engage voters is through petitions. When an individual signs a petition, their information can be collected and used for the purpose stated on the petition. Any other use requires the consent of the individual.

Personal information does not always come directly from voters. Sometimes the parties collect information from other sources, such as data brokers. Parties can collect personal information from data brokers when the information originates from a prescribed source of public information, such as a telephone directory or registry. The collection and use of this information must be consistent with the reason that the information was made available.

PIPA also extends to the collection, use, and disclosure of personal information on social media. When a party collects information from an individual on social media, they must get either implied or express consent. Parties must also get consent before using an email address to find individuals on social media.

Some of the parties analyze and profile the voters in their database. They use the personal information collected about voters to infer demographics and predict support. Again, parties need consent to use personal information for this purpose. The assumptions made by some of the parties in this report also challenges their ability to ensure that the information they have is accurate.

The analysis and profiling of voters also occurs when parties disclose voter information to Facebook to find and target individuals who may share similar attributes or political leanings.

Individuals are not informed that their information is being used in this way, and it is unlikely that parties have the consent to disclose voter information for this purpose.

Political parties must have privacy policies that explain how they will meet their obligations in PIPA. All of the parties have developed privacy policies and made them available. However, each of the policies need to be revised to fully address the responsibilities and obligations in PIPA.

All of the parties met the basic technical requirements for protecting personal information. However the report identifies a number of areas where they need to improve and strengthen security. For some, this includes conducting regular audits of system access. For all, it requires a more comprehensive approach to privacy training for employees and volunteers.

PIPA allows individuals to request access to their personal information. Parties are required to provide that information with limited exceptions, one of which is if the information would reveal confidential commercial information. Despite arguments to the contrary, the inferred data and support scores that parties assign to individuals do not meet this criteria because they do not relate to commercial activity.

1 BACKGROUND & METHODOLOGY

Background

The *Personal Information Protection Act* (PIPA) applies to any private sector organization that collects, uses, or discloses personal information within British Columbia or about British Columbians. This includes political parties. The report that follows examines how the Green Party Political Association of British Columbia (Green Party), British Columbia Liberal Party (Liberal Party), and New Democratic Party of British Columbia (BC NDP) collect, use, and disclose the personal information of voters. These parties were chosen because they were the only parties that requested the entire voters list from Elections BC in the last provincial election.

This investigation was launched against the backdrop of several recent developments.

In 2015 the BC Legislature amended the *Election Act* to require Elections BC to provide political parties and candidates, on request, with an electronic voters list. Elections BC is also now required to reveal who on that list voted in the last general election. This information is subject to disclosure after advance voting, during general voting, or after an election or by-election.

The move to require disclosure of voter participation records to parties and candidates caused my office to express concern that this was an unreasonable invasion of a citizen's privacy. In response, the Legislature added a requirement for political parties to file a privacy policy

acceptable to the Chief Electoral Officer before receiving any voter data. The 2017 provincial election marked the first time that Elections BC provided political parties with the newly required voter participation information.

Throughout the 2017 election, my office received several complaints about political parties improperly disclosing and failing to take adequate security measures to protect the personal information of voters. The complaints included instances of stolen equipment, lost canvassing lists, and retention of voter data after the election.

Those complaints and the changes to the *Election Act* served as the basis for my office launching this investigation.

Methodology

As part of the investigation, we analyzed the following for each party:

- privacy policies;
- personal information inventories under the custody or control of each party;
- a list of the sources of any personal information collected by the party and the type of personal information collected from each source;
- how the personal information was collected, used, or disclosed;
- the retention period for personal information;
- a description of how personal information is secured;
- a list of all persons to whom the party discloses personal information, the purpose for that disclosure, and the type of personal information disclosed;
- an explanation of how this collection, use, disclosure, and retention is authorized by PIPA; and
- a written submission on the authority to withhold any personal information in response to a request for access to their own personal information.

We assessed the answers to these questions, our follow-up inquiries, and the privacy policies of each party against the requirements of PIPA and the *Election Act*. We provided the political parties with an opportunity to review our findings and recommendations prior to publishing this report.

All three political parties cooperated with this investigation, providing responses to numerous follow-up inquiries from the investigators. In this report we accept the parties' representations in response to our questions, and have not conducted audits of the party databases. While my office may undertake such an audit in the future, for this initial assessment I believe it is more important to gain a broad, high-level understanding of how each party collects, uses, and discloses personal information, as well as the security measures in place to protect that information. In this way, my office, the parties and, most importantly British Columbians, can begin a discussion about how personal information should be handled by political parties.

This report is not intended to be an exhaustive examination of every aspect of the political parties' activities with respect to personal information. It does not, for example, analyze local party constituency associations or candidates that may control data. Rather, it looks at the way the parties' central offices treat personal information.

The findings and recommendations in this report, however, apply equally to constituency associations, and should guide the collection, use, and disclosure of those and similar organizations in BC. To that end, these recommendations are intended to be constructive and provide the parties with guidance to enhance their practices and respect the privacy of British Columbians.

2 LEGISLATION

In BC, both PIPA and the *Election Act* regulate political parties.

This investigation was conducted pursuant to section 36(1)(a) of PIPA, which authorizes me to initiate investigations to ensure organizations are complying with PIPA, and applies to any collection, use, or disclosure of personal information by a private sector organization.

2.1 *Personal Information Protection Act* (PIPA)

PIPA defines "organization" broadly to include a person, an unincorporated association, a trade union, a trust, or a not for profit organization.[1] This differs from Canada's federal private sector privacy legislation, the *Personal Information Protection and Electronic Documents Act* (PIPEDA), which only applies to organizations engaged in commercial activity.

The Privacy Commissioner of Canada has stated that political parties are not engaged in commercial activity, and are therefore not subject to PIPEDA.[2] PIPA is not restricted to commercial activity. Section 3(1) of PIPA states that PIPA applies to every organization except for those listed under s. 3(2) of PIPA. None of those exceptions applies to political parties. Therefore, political parties are subject to PIPA and to oversight by my office.[3]

PIPA provides for both the right of individuals to protect their personal information and for the legitimate need for organizations to collect, use, and disclose personal information. PIPA states that an organization must only collect, use, or disclose personal information about an individual if the individual has consented, or if otherwise authorized by PIPA or another law.[4] Consent may be either express or implied. However, PIPA limits the personal information that

[1] *Personal Information Protection Act*, at s. 1.
[2] https://www.priv.gc.ca/en/opc-actions-and-decisions/advice-to-parliament/2018/parl_20180417/
[3] Investigation Report F13-04
[4] s. 6 of PIPA

organizations collect, use, and disclose to what a reasonable person would consider appropriate in the circumstances, even if an individual has consented.

2.1.1 Express consent

Express consent requires an organization to provide an individual with a clear statement, either verbally or in writing, of the purpose for collection on or before collecting their personal information. The individual must then voluntarily agree to the organization collecting, using, and disclosing their personal information.

2.1.2 Implied consent

PIPA allows for implied consent when collecting personal information if a reasonable person would consider the purpose for its collection to be obvious, and the individual the information is about voluntarily provides the personal information for that purpose.[5] In these cases, the organization will not have given the individual any express verbal or written notice of the purpose for collection of the individual's personal information. In other words, the organization will not have told the individual the purposes for which the individual's personal information will be used or disclosed. The only question is whether it would be "obvious" to a "reasonable person" what those unstated purposes are.

Orders of my office under PIPA make it clear that the threshold of what is "obvious to a reasonable person" is high. Clear cases can be identified, such as where an individual gives their name and unlisted phone number to a drycleaner. The drycleaner's use of that information to contact the customer to pick up their completed order would be obvious to a reasonable person. An individual with little or no understanding of the organization, or the area of activity in which it is engaged, more often than not will understand how the organization would use the information.

Both implied and express consent only apply to the individual the information is about, and cannot be given on behalf of another individual who is capable of consenting.[6]

2.1.3 Collection without consent

PIPA also lists a series of circumstances for collection without consent,[7] two of which are relevant to this report. Section 12(1)(h) allows for collection without consent when authorized by law. An example is the *Election Act* and the *Electoral Purposes for Access to and Use of Personal Information Regulation* (Election Act Regulation), which expressly permits registered political parties to collect the voters lists, including voter participation data from Elections BC.

[5] s. 8 of PIPA
[6] It is clear that an individual can only consent on behalf of another individual if the other individual is a minor or otherwise incapable of consenting. Section 2 of the PIPA Regulation makes this clear.
[7] s. 12(1) of PIPA

Subsection 12(1)(e) authorizes collection without consent if the information is available from a public source listed in s. 6 of the Personal Information Protection Regulation, made under PIPA (PIPA Regulation). This includes information available through directory assistance, personal information in a professional or business directory, information in a registry created by law that the public has a right of access to, or publicly-available personal information in a printed or electronic publication.[8]

2.1.4 Use without consent

Section 15(1) of PIPA authorizes the use of personal information without consent in limited circumstances. The parts of s. 15 relevant to this report mirror the collection provisions just described, that is, where the use of personal information is obtained from a publicly-available source, and the use is required or authorized by law.

2.1.5 Disclosure without consent

PIPA allows a political party to disclose personal information in its custody or control to another organization without consent if the other organization is contacting the individual on behalf of the political party.[9] The individual must have consented to the initial collection of information by the political party. The subsequent disclosure must be for a purpose consistent with the initial collection and be used to enable the other organization to assist with the political party's work.

2.1.6 Access to personal information

PIPA provides individuals with a right of access to their own personal information in the custody or control of a political party.[10] Individuals are also entitled to know how their personal information has and is being used.[11] PIPA further requires political parties to provide individuals with the names of any individuals and organizations to whom their information has been disclosed.[12]

However, that right to access is not absolute. PIPA provides a number of exceptions to this right, such as where:

- personal information is protected by solicitor client privilege,
- disclosure would reveal personal information about another individual; or
- disclosure would reveal confidential commercial information.[13]

[8] PIPA Regulation 6, http://www.bclaws.ca/civix/document/id/complete/statreg/473_2003#section6
[9] s. 18(2) of PIPA
[10] s. 23(1)(a) of PIPA
[11] s. 23(1)(b) of PIPA
[12] s. 23(1)(c) of PIPA
[13] These and other exceptions are found in s. 23(3) of PIPA.

2.1.7 Accuracy and correction

When an organization is likely to use personal information to make a decision that affects an individual, or will disclose the individual's personal information to another organization, PIPA requires that the organization make every reasonable effort to ensure the accuracy and completeness of personal information.[14] PIPA also entitles an individual to request that an organization correct an error or omission in the individual's personal information that is in the organization's control.[15]

2.2 *Election Act*

The *Election Act* establishes the roles and responsibilities of individuals and organizations participating in provincial elections and other electoral events.

Sections 1 and 155 of the *Election Act* define a political party as "an organization that has as a primary purpose the fielding of candidates for election to the Legislative Assembly."

The *Election Act* and its companion Election Act Regulation govern the disclosure of the list of voters and voter participation data by Elections BC to registered political parties, and the use of that data by the parties.

Section 51(2) of the *Election Act* requires the Chief Electoral Officer to provide registered political parties, upon request, with the list of voters and a list of who voted in the last election.

Sections 275(3.2) to (3.3) restrict the subsequent use of that information by political parties to the purposes of the *Election Act* and prohibit use for any commercial purposes. Further, the Election Act Regulation limits the use of this information to "electoral purposes", which it defines as communication with voters, including for the purposes of soliciting campaign support and political contributions, and recruiting party members by a provincial registered political party.

[14] s. 33 of PIPA
[15] s. 24 of PIPA.

3 ISSUES

The issues in this investigation are:

1. What personal information do political parties collect, and is that collection authorized?
2. How do political parties use personal information, and is that use authorized?
3. Do political parties disclose personal information, and are these disclosures authorized?
4. Do political parties take reasonable security measures to protect the personal information in their custody?
5. Does PIPA authorize political parties to withhold personal information when requested by individuals?
6. Do political parties have privacy policies, and if so are they adequate?

4 ANALYSIS

Issue 1: What personal information do political parties collect, and is that collection authorized?

Political parties and candidates seeking office gather personal information about voters to both understand and communicate with them. While not every party collects the same data, my investigation found that political parties variously collect the following personal information of BC voters:

COLLECTED PERSONAL INFORMATION			
Information related to identity			
Surname	Given name(s)	Date of birth	Residential address
Mailing address	Email address	Phone number	
Other Information about the Individual			
Sex	Ethnicity	Age	Language(s)
Religion	Income	Education	Familial relations
Family or marital status	Profession	Workplace name	Job title
Profession status (e.g. practising or non-practising)	Number of years at residential address	Neighbourhood demographics	Issues of interest to the individual
Political support tier / score	Ease of persuasion tier / score	Do not call or Do not contact notices	LinkedIn ID
Twitter ID	Facebook ID	Skype ID	
Party Participation Data			
Party membership status	Type of membership	Prospective member	Volunteer status
Volunteer availability	Interest in a lawn sign	Donor status (monthly, one-time)	Donation amount
Date of donation	Previous election support level	If the individual subscribes to communications	What communications were sent and when
Internal working group membership			
Financial Information			
Personal cheque or credit card number	Name as shown on credit card	Card expiry	Signature
Election BC Data (Voters List / Voter participation data)			
Electoral district	Electoral District Code	Voting area code	Previous or current election voter number
Voting card number	Federal riding	Party's share of votes in an individual's riding	Voting location
Municipal District	If the individual has voted in the current election	If/when the individual voted in the last election (advanced v. general voting day)	

It is worth reiterating that organizations, including political parties, are not entitled to collect whatever information they want about a person. They can only collect the personal information that PIPA and/or the *Election Act* allows.

What follows is a more detailed examination of the types of information collected, the various sources of collection, and whether this collection is lawful.

4.1 Voters lists and voter participation data

The primary source of information for all parties is the list of voters collected from Elections BC. From this, parties collect the following personal information:

- full name;
- home address;
- mailing address;
- electoral district; and
- initials.

When a general election or by-election is underway, political parties can require Elections BC to identify who voted in the most recent election along with their:

- voting area code;
- voting card number; and
- voter number.

All of this can be requested at the end of any advance voting day as well as at intervals during general voting day. Political parties use this information to, among other things, target which voters to communicate with, and ascertain whether individuals identified as supporters have voted.

Some political parties ask Elections BC for voter participation information and some do not, as the table below indicates:

INFORMATION COLLECTED FROM ELECTIONS BC		
Political party	**Voters lists**	**Voter participation data**
Green	✓	✗
Liberal	✓	✓
BC NDP	✓	✓

Finding 1: The *Election Act* authorizes all political parties to collect and use the voters list and voter participation data collected at the last provincial general election/by-election from Elections BC, solely for the purpose of communicating with voters.

4.2 Merging the voters list with other collected personal information

The political parties we investigated merge information from the list of voters with information collected from other sources. Other sources vary by political party. They include door-to-door canvassing, telephone canvassing, petitions, and social media. Each is examined below.

While the *Election Act* regulates the collection, use, and disclosure of personal information found on the voters list, under PIPA my office oversees the collection, use, and disclosure of all other personal information that political parties add to it.

4.3 Door-to-door canvassing

Door-to-door canvassing is one method political parties use to glean more personal information about a voter.

4.3.1 Collection of basic voter campaign information

Political parties told my investigators they collect the following basic voter campaign information (basic voter information) from voters during a door-to-door canvas:[16]

- full name;
- address;
- phone number;
- email address;
- an indication of party support;
- whether the individual would like a lawn sign, or to volunteer for the party; and
- issues of importance to the voter.

Again, PIPA allows for collection with express consent of the individual.

All of the parties instruct their canvassers to identify themselves, the party, and the reasons for collecting personal information from the voter. If this instruction is followed and the individual supplies the requested information, the basic voter information is collected with express consent. Political parties are therefore allowed to use this personal information collected for the purposes stated by canvassers, as set out below.

[16] While this investigation did not examine the technology used for door-to-door canvassing, my office is aware that mobile app solutions, such as MiniVan, are being adopted by some campaigns. This may be a future area of investigation by my office.

The following table lists the reasons provided by each party for collecting the basic voter information:

REASONS PROVIDED FOR COLLECTION	
Political party	**Reasons provided**
Green	Future communications
Liberal	Soliciting support for the party or candidate
BC NDP	For the party to use their name, phone number and email addresses for future contact

Finding 2: All parties have express consent to collect basic voter information during door-to-door canvassing for the reasons stated by the canvassers.

Whether political parties use the personal information they collect in a manner consistent with the stated purposes for collection is discussed later in this report.

4.3.2 Additional information collected through door-to-door canvassing

My investigators found that the Liberal Party and BC NDP canvassers might also collect information about a voter's:

- gender;
- ethnicity;
- language; and
- religion.

These are especially sensitive categories of personal information.

My investigators were told by the political parties this collection results from the observations made by a canvasser, who then records it. The voter is not told of the recording and it is highly debatable that most individuals would agree to it if they were told. In other words, it is highly unlikely - particularly as it concerns gender, ethnicity, and religion - that voters are consenting to this collection.

It is arguable that if an individual addresses a party canvasser in a language other than English, a reasonable person would assume that the canvasser would note that individuals' language preference. This collection of preferred language may be authorized by implied consent.

Both the Liberal Party and the BC NDP stated they do not direct their canvassers to collect an individual's religion, gender, or ethnicity when canvassing. However, when collected it is nonetheless added to their party databases when the canvassers return from the field.

While this information might, if accurate, be useful to a political party for targeting voter support, PIPA does not allow its collection without express consent from the individual. An underlying principle of PIPA is the right of individuals to control the personal information an organization collects about them. In this case voters likely did not consent to the collection of this sensitive information, and the political parties did not point me to any provision of PIPA that would otherwise allow this collection.

Finding 3: PIPA does not allow political parties to collect gender, religion, and ethnicity by observation without express consent.

RECOMMENDATION 1
All political parties should ensure door-to-door canvassers do not collect the personal information of voters, including but not limited to gender, religion, and ethnicity information unless that voter has consented to its collection.

Liberal Party canvassers will also ask a person at the door step whether other members of the household share the person's expressed views. Besides the questionable accuracy of such second-hand information, PIPA would only allow a political party to indirectly collect this kind of personal information in the narrowest of circumstances[17].

Finding 4: PIPA does not authorize the Liberal Party's current practice of collecting the personal information of third parties from other members of their household.

RECOMMENDATION 2
All political parties should ensure that door-to-door canvassers only collect the personal information of individuals they speak to directly and who provide that information voluntarily.

4.4 Telephone canvassing

All political parties engage in telephone canvassing. They collect phone numbers from petitions, social media, membership and donor lists.[18] The purposes for telephone canvasing can range from gauging party support to fundraising for the party.

[17] This is because PIPA only allows an individual to consent on behalf of another individual if that individual is incapable of consenting, which is only going to be the case exceptionally. PIPA does not support a general practice of collecting personal information of third parties from other members of their household.
[18] There is a common misconception that Elections BC gives telephone numbers to the political parties.

All parties also purchase lists of publicly-available telephone numbers from data brokers and merge these lists with their membership database. This is the only instance in this investigation where political parties reported collecting personal information from data brokers.

The PIPA Regulation allows a political party to collect personal information that is accessible through certain publicly-available sources.[19] Public phone directories are one such permitted source. Therefore, as long as the use of the phone numbers is for a purpose a reasonable person would consider appropriate, such as contacting the individual to solicit support, PIPA authorizes the collection without the voter's consent.[20]

Finding 5: PIPA allows political parties to collect and use telephone numbers contained in a public phone directory because they are a prescribed source of publicly-available information.

My investigators found that canvassers of all parties begin their telephone calls by identifying the political party they represent and then either confirming or asking the name of the voter. The voter is then told the purpose for the call, such as requesting donations or seeking their support. Depending on the individual's indication of support for the party, the canvasser may ask them to make a one-time or recurring donation, volunteer for the party, provide their opinions on a policy position, or put up a lawn sign.

Finding 6: All political parties conduct phone canvassing. When a political party calls a potential voter and identifies who they are and the reason for the call, the party is allowed to collect the personal information voluntarily provided by the individual in response to the canvasser's questions.[21] The political parties are limited to using the information only for the purpose identified by the canvasser.

Phone canvassers for the Liberal Party and the BC NDP specifically ask voters whether the answers provided by them applies to all voters within the household. Both parties record this answer in their databases.

As noted with door-to-door canvassing, PIPA only allows an individual to consent on behalf of another individual if that individual is incapable of consenting, which is also not generally the case here. Therefore, PIPA does not allow the Liberal Party and the BC NDP's general practice of collection of personal information about third parties during telephone canvassing.

Finding 7: PIPA does not authorize the Liberal Party and the BC NDP to collect third-party personal information when telephone canvassing.

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[19] Section 6(1)(a) of the PIPA Regulation

[20] Section 12(1)(e) of PIPA

[21] Political parties contract out telephone canvassing. Regardless of whether the party or a contractor conducts the canvassing, political parties are obliged to identify themselves and the reason for their call, and get consent for the collection of personal information from the individual, as required by PIPA.

RECOMMENDATION 3

All political parties should ensure that telephone canvassers only collect the personal information of individuals they speak to directly.

4.5 Petition information

Political parties use digital and paper petitions to gather information about voters and their concerns about issues.

Voters frequently give political parties the following personal information when signing a petition:

- name;
- address;
- phone number;
- email address; and
- indication of support for a particular issue.

All political parties told my investigators that although it is not always explicitly stated, it would be obvious to the person signing a petition that their information would be used for the purpose of promoting the issue or objective of the petition. I would agree.

Consent has to be express for the use of personal information beyond the objective of the petition. All three parties submitted that they gained express consent by including a link to their privacy policies at the bottom of the electronic petitions.

In this context, it is questionable whether this is adequate. The specific uses for the information should be stated succinctly, simply, and prominently on the petition itself. If needed, further details can be described in an easily accessible privacy policy.

The Green Party has attempted to do this in some measure by stating that those who sign the petition will receive Green Party updates by text or email unless they opt-out.

As noted, all of the parties' petitions linked to privacy policies. The BC NDP's privacy policy was the only policy that specifically dealt with petition information, but even it did not describe all the uses the BC NDP made of the personal information on the petition. If political parties wish to use petition information for any purpose other than purpose of promoting the issue or objective of the petition, they need to get express consent of the individual.

Finding 8: All of the parties have implied consent to use petition information for the purpose of furthering the objective of the petition.

Finding 9: All parties use petition information to contact individuals who sign the petition, but only the Green Party has express consent to do so. None of the parties have consent for any additional use of petition information.

RECOMMENDATION 4
All political parties should get express consent for the collection of personal information in a petition if that personal information is going to be used for any purpose other than the obvious purpose of promoting the issue or objective of the petition.

RECOMMENDATION 5
All political parties should prominently provide a succinct and simple explanation of the purposes for gathering the personal information at the point of collection.

4.6 Social media

All political parties use social media to interact with voters.

The following chart describes what personal information political parties add to their databases from social media sites, and how they collect it.

COLLECTION FROM SOCIAL MEDIA SITES		
Political party	**Information collected**	**Means of collection**
Green	Profile information, including username, email address, location, Twitter biography, and profile picture. The Green Party also collects whether someone has liked, shared, or commented on any of the party's social media posts.	Nation Builder's "Match" function, uses a person's email address to "scrape" their public social media accounts. Emails are obtained voluntarily directly from them or from the fact they "like" a Green Party Facebook or Twitter post.
Liberal	Personal information is collected from social media sites but the Liberal Party did not explain specifically what is collected, noting only that it retains the information in a secure electronic database consistent with other types of personal information.	The Liberal Party did not explain how they collect information from social media sites, and simply referred to social media sites' "applicable privacy policy"[22] for more information.
BC NDP	The personal information of 40,000 people from Twitter, LinkedIn and Facebook was collected. The personal information was not specified, nor whether they continue to retain it. The BC NDP does say it was one time "historic" collection and it no longer does this.	The BC NDP stated the information was collected by a one-time web-scrape.
	The BC NDP database also contains Facebook, LinkedIn, Skype, and Twitter profiles of 1850 individuals, whom they believe to be volunteers.	The BC NDP does not know the source of the information, but believes the information was entered by local campaigns or database users or volunteers about themselves.

[22] The issue of what personal information Facebook retains is beyond the scope of this investigation.

When an individual directly communicates with a political party using social media, a party may collect and add that information to their database for the purpose of communicating with that individual. The collection for this purpose is authorized by implied consent, because the user understands the nature of the platform and has voluntarily communicated with the party.

However, use of this information beyond the purpose of communication, such as voter profiling or scoring, is likely not authorized by PIPA without express consent.

When an individual "likes" or shares information about a political party on a social media platform, that action does not provide consent for the party to collect the individual's personal information. If the individual does desire further interaction with the party, it is very easy for them to do so.

Neither the Liberal Party nor the Green Party get consent from an individual to collect their profile information when that individual "likes" or shares a party's social media post.

The Green Party also uses the Nation Builder Match tool to link an individual's email address to their social media profiles. As the collection enabled by this tool would not be obvious to a reasonable person, it cannot be authorized by implied consent. The Green Party should get that individual's express consent to collect this information before adding it to the party database.

Finding 10: PIPA allows political parties to collect, by implied consent, the contents of a social media communication posted on the party's social media page for the purpose of responding to an individual's communication.

Finding 11: Political parties do not have implied consent to add to their database any personal information collected through social media merely because the individual has interacted with a party by "liking" a post or an article on a social media platform.

Finding 12: Political parties do not get express consent to link email addresses with social media profiles.

RECOMMENDATION 6
All political parties should ensure they only collect personal information from social media with the consent of the individual.

Issue 2: How do political parties use personal information, and is that use authorized?

All political parties accumulate personal information in their databases from voters lists, canvassing, petitions, and social media sites to make predictions about individuals. This includes predicting a voter's ethnicity, gender, age and likely level of support for the party.

4.7 Inferring new information about voters

Ethnicity, gender and age

Political parties attempt to infer new information about voters through the processing of personal information in their databases. For example, the Liberal Party and the BC NDP attempt to predict additional factors about individuals such as their ethnicity, gender, and age based solely on their name. The parties, either manually or using software, compare an individual's name to historically popular names to estimate their age. Gender and ethnicity are similarly inferred.

The issue here is whether political parties are allowed to use information in their database to make predictions, thereby creating new information about a person.

My investigators found no evidence the parties seek consent from voters to use their personal information in this way. It would certainly not be obvious to a voter this would be the case when they simply confirm their name through a telephone or door-to-door canvass.

It is questionable whether analyzing a person's name to decipher their ethnicity, age, or gender could be authorized by PIPA without consent. It is likely that this would go beyond the reasonable expectations of many British Columbians.

Finding 13: The use of personal information to predict and profile a voter's ethnicity, gender, or age is likely not authorized by PIPA without consent.

PIPA also requires that an organization ensure the personal information it collects about an individual is accurate.[23] As this method of inferring personal information can be inaccurate, the compilation of this information may be in contravention of PIPA.

Voter Scoring

Political parties seek to identify likely supporters and ensure those individuals vote during an election. In some cases, this is relatively easy. A person might tell a canvasser that they support

[23] s. 33 of PIPA.

the canvasser's party. A political party would not need a sophisticated algorithm to predict the individual's voting intention.

However, predicting a voter's attitude to the party is not always so straightforward. Voter preferences shift, sometimes they cannot be reached before voting day, or the voter has not made up their mind when contacted. In order to target their resources, all of the parties have systems that attempt to guess the likelihood the voter will support the party.

The table below explains how each party uses the personal information it has collected about a voter to predict their voting intentions and how those intentions are "scored" by the parties.

VOTER SCORING	
Political party	**How the Likelihood of Voter Support is measured**
Green	Uses a point scale of support based on interactions with the voter, such as online activity, donations, or engagement with canvassers.
Liberal	Determines voter intention and party preference through canvassing. The party submitted database entries indicating it tracks interactions with voters including email subscription, visits to the party's website, canvassing, and donations. However, the party submits that it does not develop a unique score to determine support.
BC NDP	Creates a point support score based on the voter's collected personal information compared to modeled survey data.

None of the political parties explicitly ask a voter's permission to process their personal information to record predictions about them. I do not consider this analytical processing would necessarily be obvious to a reasonable voter, meaning that a voter cannot be said to be giving implicit consent.

None of the parties has to date provided my office with a satisfactory explanation of how such processing is in accord with PIPA. I have significant concerns that it may not be. We have not received a complaint to date about party profiling of voters, but that should not be surprising given that the parties have not been transparent about this practice. The outcome of such a complaint would be dependent on the facts. It is at the very least important that all political parties transparently disclose to voters how they are profiled and scored.

RECOMMENDATION 7

All political parties should be transparent about how they profile voters.

4.8 Publicly-available information

Only one of the parties provided submissions indicating that they use information from professional and business directories. The BC NDP stated that it used personal information from publicly-available professional and business directories, such as the Law Society of British Columbia's Lawyer Directory, to identify potential donors to the party. While the PIPA Regulation authorizes political parties' collection and use of this personal information without consent, the purpose for collection and use must be what a reasonable person would consider appropriate in the circumstances.[24]

A reasonable use of personal information collected without consent from a professional or business directory would be for a purpose related to the business or occupation of the individuals listed in the directory. For example, it would be reasonable to use that information to determine whether a person was a lawyer in good standing in BC, or to contact that individual seeking their services. However, there does not appear to be a reasonable connection between the use of that information to infer other characteristics, such as likelihood to donate money to the party, and the purpose that the information is available in the directory. For this reason, PIPA likely does not authorize this use.

Finding 14: PIPA does not likely allow the use of personal information collected from publicly-available sources for fundraising purposes.

RECOMMENDATION 8

All political parties should collect publicly-available personal information without consent only if there is a reasonable connection between the purpose for collection and the purpose for which the information is publicly available.

Issue 3: Do political parties disclose voters' personal information, and are these disclosures authorized?

The political parties told my investigators that they do not disclose personal information to municipal or federal political parties.[25]

[24] ss. 11 and 14 of PIPA and s. 6(1)(b) of the PIPA Regulation

[25] The provincial and federal NDP have the same membership list, but the provincial NDP does not disclose the personal information of non-members to the federal NDP.

The political parties disclose personal information to organizations working as contractors for the party, for activities such as email marketing or telephone canvassing. This disclosure is allowed by PIPA.[26]

The only type of disclosure of concern to my investigators was disclosure to social media platforms.

4.8.1 Social Media

Social media companies, especially Facebook, know a lot about their users, which can be very useful to political parties trying to target their messages at defined categories of people such as by age, gender and or where they live.

When a very narrow and highly specific category of people is chosen as an advertising target it is sometimes referred to as "microtargeting". Whatever the case, the political parties tell a social media platform the type of audience it wants to reach. This does not entail giving the platform anyone's personal information.

However, my investigators found that there are other circumstances where the political parties do turn over voter personal information to social media platforms. All three parties told my investigators they disclose the email addresses of known supporters[27] to companies like Facebook. Additionally, the BC NDP gives Facebook the first and last name of their supporters along with phone number, city of residence, and date of birth. The Liberal Party disclosed to my investigators that it uploads its financial donor list to Facebook.[28]

The parties turn over the personal information of their supporters for two reasons.

The first is that it allows the party to directly serve its advertisements to these supporters on a social media platform. Facebook for example, will match the emails (or other supplied identifiers) with the voters' Facebook account if they have one. The party then advertises to that individual through their Facebook newsfeed. All three parties use this advertising strategy.

All of the parties also disclose lists of supporters to utilize Facebook's "Lookalike" audience tool.

Facebook analyzes the extensive information it has collected about those who are Facebook users to determine if they share certain characteristics. Once Facebook has identified a group of

[26] s. 18.2 of PIPA

[27] I have accepted at face value for the purposes of this investigation the parties' statements that these disclosures are only for those individuals who have positively affirmed support for the party. This would be opposed to someone who may have signed a party petition about an issue or merely expressed an interest in the party. This may be an area of future audit by my office.

[28] The question of what Facebook and other companies do with information is beyond the scope of the present investigation.

people who "look like" the party's existing supporters, Facebook offers the party the opportunity to advertise to those people.

The issue here is whether the political parties are entitled to disclose email addresses and other identifiers like birth dates to social media platforms in the manner described above.

A political party may use an individual's email address or social media user name to contact the individual through a social media platform only if the information was originally collected for that purpose with consent.

When an individual communicates with a party using email, an individual would reasonably expect the party to use that same medium to communicate with them. The party is permitted to use another organization to send those emails on its behalf.[29]

The individual would not expect the party to use the email to identify them on a different medium, such as social media, for advertising purposes.

Moreover, disclosing supporter email addresses for data analysis and profiling by Facebook's "Lookalike" tool is also entirely different from the political parties stated or inferred reason for collecting the email address. For example, it would not be permissible to use an email address collected on a petition to upload to Facebook for analytics or advertising. For PIPA to permit this practice, the political party would have to get clear consent for doing so.

Finding 15: PIPA permits political parties to disclose personal information to a social media provider to contact individuals if those individuals had originally contacted the political party via that social media platform, or expressly consented to the collection of their email address for the purpose of being contacted via social media.

Finding 16: PIPA does not permit political parties to disclose email addresses or other identifying information of supporters to a social media platform for data analysis or profiling without the express consent of the individual.

RECOMMENDATION 9
All political parties should only disclose email addresses to social media providers with express consent.

[29] S. 18(2) of PIPA

Issue 4: Do political parties take reasonable security measures to protect the personal information in their custody?

Information about someone's political opinions or voting inclinations, whether stated by the individual or inferred, is particularly sensitive. It is of vital importance therefore that political parties take reasonable security measures to protect it. PIPA mandates the implementation of technical and policy controls to prevent unauthorized access, collection, use, or disclosure of personal information.

All political parties store information about voters in databases. These systems organize the personal information about voters and enable the party to engage with voters.

4.9 User Access Controls

Reasonable security arrangements include securing the personal information held by an organization and ensuring that only those with a need to have access to personal information are able to get that access. While this investigation did not examine the details of each party's user access controls, each political party stated that it did have such controls in place. Each party submitted that party headquarters had oversight over who was granted access and, when granting access, roles are delegated to the candidate and campaign manager, who receive training about the types of volunteers that should be provided access to the database.

4.10 Storage

STORAGE	
Political party	**Database**
Green	The Green Party uses *Nation Builder* as its voter database. *Nation Builder* is a widely available product for voter management and contains built-in tools for voter scoring and targeted social media advertising.
Liberal	The Liberal Party uses a custom database for its voter data.
BC NDP	The BC NDP uses multiple databases to manage: • primary voter information; • financial and membership records, such as processing donations; • online activities, such as donations through the party's website and fundraising; and • reporting dashboards for fundraising and public outreach. *Populus* is the main information database that tracks public outreach and personal information of potential voters. It is used by the party and its constituencies that opt-in to its use.

We reviewed the security measures of each political party and found that, while each party is meeting the minimum technical security control requirements of PIPA, they are failing to protect personal information due to inadequate policy controls and poor implementation of existing policies.[30] These concerns are discussed in greater detail below.

4.11 Political parties' audits of access of their databases

A basic element of the reasonable security arrangements required by PIPA is that an organization has the ability to audit access to databases containing personal information, to ensure the information has not been accessed without authorization. A regular program for such proactive audits, by reviewing access to personal information in a database, is necessary to ensure an organization's technical and policy controls are effective. Without audits, a political party would be less likely to know that it had been subject to a privacy breach.

PARTIES' AUDIT OF ACCESS TO DATABASES

Political party	Frequency
Green	The Green Party conducts quarterly audits of access to its voter information database.
Liberal	The Liberal Party has no audit policy for its voter information database, and has never conducted an audit.
BC NDP	The BC NDP conducts periodic audits of one of its four databases, but does not conduct audits of the other three.

Finding 17: Due to the lack of regular auditing, the Liberal Party and the BC NDP have failed to make reasonable security arrangements to prevent unauthorized access and disclosure of personal information in their custody as required by PIPA.

RECOMMENDATION 10

All political parties should implement regular audits for all electronic systems containing personal information.

[30] The scope of the investigation only asked parties to describe security measures and did not include further inspection of the parties' security measures. Our analysis for the purposes of the report is limited to an analysis of one administrative control (privacy policy) and one technological control (audit of databases).

4.12 Employee and volunteer training

During this investigation my investigators found it challenging to gather accurate and complete information from each of the political parties. This was largely due to the transient nature of political party volunteers and employees – many of the employees who might have been able to answer our questions no longer worked for the respective political party.

This is emblematic of the largest risk for the protection of personal information that political parties face, namely, the rapid expansion of employees and volunteers in a lead-up to, and during an election, followed by a precipitous decrease immediately after elections, with very little continuity of personnel.

The very essence of an election campaign requires the quick collection and analysis of personal information about voters by thousands of employees and volunteers who come and go between elections. Across BC, these individuals vary greatly in their experience and privacy training, yet political parties trust them with access to large amounts of voters' personal information. These features put voters' information at risk.

My investigators carefully questioned the parties about what measures each of them were putting in place to mitigate this risk. While each political party assured my office that every volunteer and employee receives privacy training, none of the parties provided more than meagre examples of privacy training materials, such as materials instructing employees and volunteers to simply read over and sign off on the party's privacy policy. This is insufficient and is not a substitute for proper privacy training. This state of affairs increases the risk of a significant privacy breach, especially as personal information is increasingly collected, used, disclosed and stored in digital formats.

Therefore, I intend to work with my colleague, the Chief Electoral Officer of British Columbia, to recommend that all political parties receiving the list of voters from Elections BC in the last election provide detailed employee and volunteer training plans and materials for our joint review and comment. At a minimum these plans and materials should ensure that each employee and volunteer receive privacy training prior to gaining access to any voter personal information and that the training be revisited and reinforced throughout the campaign.

Finding 18: All political parties lack the privacy training plans, and training materials necessary to ensure the protection of personal information.

RECOMMENDATION 11
All political parties should provide a detailed employee and volunteer privacy training plan and associated materials for review and comment by my office and Elections BC.

4.13 Retention of Personal Information

PIPA requires political parties to destroy the personal information of an individual as soon as it is reasonable to assume that the retention of it no longer serves its intended purpose and retention is no longer necessary for legal or business purposes.[31]

RETENTION	
Political party	**Retention periods**
Green	Retains all personal information (such as memberships, donation history, or past addresses,) indefinitely unless the individual requests its deletion
Liberal	Retains personal information as long as the party requires it for an electoral purpose, which the party identified as communicating with voters, soliciting for campaign support and political contributions, and recruiting party members. This information is retained until an individual has been removed from the most recent voters list provided by Elections BC, the party becomes aware that the individual is deceased, or if an individual withdraws consent to the collection, use, or disclosure of personal information by the party. The party database contains personal information dating from 2009.
BC NDP	Retention periods differ depending on the department of the party responsible for the personal information, and vary from undefined to indefinite.

As part of the investigation, two of my investigators requested all of the personal information each political party had about them. The Green Party's response included out-of-date addresses going back five years and an inaccurate listing of a federal riding. The Liberal Party's response included information that was collected over a decade ago. The BC NDP response went back two elections and included one prior address.

None of the political parties provided an analysis to support their practices. As those periods are, in some cases, indefinite, they likely contravene PIPA. Nor does the Liberal Party's approach clearly involve a definite retention period. In any case, the access requests made by my investigators show the retention of historical personal information, such as past residential

[31] s. 35(2) of PIPA. (In addition, s. 35(1) of PIPA requires political parties to retain an individual's personal information if it has been used to make a decision that directly affects the individual. The information must be retained for at least one year after it has been used to make the decision. This is to enable individuals a reasonable opportunity to obtain access to their personal information.

addresses and constituencies. None of the political parties provided submissions about, and cited no use for, out-of-date personal information.

Finding 19: All the political parties had an undefined or indefinite retention period for personal information, including information that was incorrect or out of date.

RECOMMENDATION 12
All political parties should review the state of their records with a view to destroying out of date information about voters.

RECOMMENDATION 13
All political parties should develop clear retention policies for personal information and should routinely review the personal information in their custody to determine whether its continued retention is authorized by PIPA.

Issue 5: Does PIPA authorize political parties to withhold personal information when requested by individuals?

Individuals have the right to ask political parties for the personal information they have about them. That right is not absolute. The parties can apply several exceptions in PIPA to allow them to withhold information. This report only examines one exception that parties told my investigators they rely upon to withhold the personal information of voters who ask for it.

I mentioned above that my investigators requested access to their information. They received the following categories of personal information in response:

- demographic data (e.g. date of birth and age);
- contact information (e.g. address and phone number);
- professional information (e.g. employer and business contact information);
- donation and volunteer history (e.g. amount and when);
- elector identification (e.g. voting card number, whether they voted, and electoral district);
- inferred information (e.g. number of years living at address, ethnicity, and support score); and
- party communications to the individual (e.g. date and medium such as e-newsletter or phone call).

More than one party noted in responding to my investigators that, were it not for the fact that these requests were made during the course our investigation, they would not have disclosed all of the above personal information. Rather, the parties stated they would have withheld the predictions made about the voter like their age, sex, supporter score, as well as associated demographics, such as their average education, income, and number of people in their household. The political parties argued that disclosing this personal information would reveal confidential commercial information that would harm the competitiveness of the party, as provided for in s. 23(3)(b) of PIPA.

This subsection of PIPA sets out three requirements a political party must meet to allow it to withhold personal information when responding to an access request. The requirements are that the disclosure of the personal information would reveal information that:

- is confidential;
- is commercial; and
- if disclosed could, in the opinion of a reasonable person, harm the competitive position of the organization.

It was not at all obvious to me that the disclosure of the personal information of voters held by political parties would reveal "commercial information" of a political party. I asked each of the political parties for submissions on how this exception applies to them. Only the BC NDP provided submissions in response.

The Oxford English Dictionary defines commercial as "concerned with or engaged in commerce" or "making or intended to make a profit."[32] Merriam Webster defines commercial as "occupied with or engaged in commerce or work intended for commerce" and "viewed with regard to profit."[33] These dictionary definitions support the view that to be commercial the entity claiming the exemption must be engaged in commerce, with a view towards a financial gain.

My office has not previously considered the meaning of commercial information in PIPA. However, s. 21 of the *Freedom of Information and Protection of Privacy Act* (FIPPA) authorizes a public body to withhold information that would disclose the "commercial information" of a third party, such as a contractor doing business with the public body. Various orders[34] interpreting this FIPPA section have found that "commercial" is that which relates to commerce, or the buying, selling, exchanging or providing of goods and services. These decisions are not binding for PIPA purposes, but they are of assistance.

The Privacy Commissioner of Canada (OPC) has also considered the meaning of commercial activity under the federal private sector legislation. While PIPA and PIPEDA are constructed

[32] https://en.oxforddictionaries.com/definition/commercial.
[33] https://www.merriam-webster.com/dictionary/commercial.
[34] Order 01-36, Order 03-05, Order F07-06, Order F08-03, Order F09-05, Order F17-45.

differently, they are "substantially similar"[35] in that they provide privacy protection consistent with and equivalent to each other. While the question of whether an organization is engaged in commercial activity under PIPEDA is different from the issue of whether information is commercial, the approach applied by the OPC is nevertheless informative.

PIPEDA defines "commercial activity" as any particular transaction, act or conduct, or any regular course of conduct that is of a commercial character, including the selling, bartering or leasing of donor, membership or other fundraising lists.[36] In an interpretation bulletin[37] about the meaning of commercial activity the OPC noted that determining whether an organization is engaged in a commercial activity is generally straightforward, but sometimes the issue is more complex and requires closer examination.

One of those complex examples was whether a private school was engaged in commercial activity.[38] The OPC found that because the core activity of the school was education, and it did not have the goal of turning a profit, it was not engaged in commercial activity despite charging tuition and engaging in fundraising. Similarly, the OPC does not consider political parties to be subject to PIPEDA because their core activity is not to be engaged in commercial activity.[39]

In my view, the core activity of political parties is to convince voters to support their party in an election. Any fundraising is in support of that activity and does not have the object of turning a profit for the party in the sense intended by the term "commercial".

In its submission, the BC NDP argued that the test for commercial activity in PIPEDA is not relevant to the interpretation of "commercial information" for the purpose of s. 23(3)(b) of PIPA. It argues that by "commercial information" the Legislature meant "business information", and that while a political party might not be engaged in commercial activity under PIPEDA, it is nevertheless engaged in business. It submits that this information is confidential business information and, in the context of extremely competitive political environment, the disclosure would harm the competitive position of the party.

The BC NDP's submission relies upon the words "business" and "commercial" being interchangeable in PIPA. However, the Legislature has used "business" elsewhere in PIPA, such as in the definitions for "contact information", "work product information", and "business transaction," and in s. 35 when referring to "business purposes." Therefore, I must assume that

[35] Organizations in the Province of British Columbia Exemption Order (SOR/2004-220), http://laws-lois.justice.gc.ca/eng/regulations/SOR-2004-220/index.html
[36] PIPEDA, s. 2
[37] https://www.priv.gc.ca/en/privacy-topics/privacy-laws-in-canada/the-personal-information-protection-and-electronic-documents-act-pipeda/pipeda-compliance-help/pipeda-interpretation-bulletins/interpretations_03_ca/.
[38] PIPEDA Case Summary #2006-345, https://www.priv.gc.ca/en/opc-actions-and-decisions/investigations/investigations-into-businesses/2006/pipeda-2006-345/.
[39] https://www.priv.gc.ca/en/opc-actions-and-decisions/research/explore-privacy-research/2012/pp_201203/; https://www.priv.gc.ca/en/privacy-topics/privacy-laws-in-canada/the-personal-information-protection-and-electronic-documents-act-pipeda/pipeda_brief/

the Legislature acted intentionally when it used the word "commercial" in s. 23, and that "business" and "commercial" are intended to mean different things.[40] I cannot reconcile the definition of "commercial" with any activity, or information derived from, the political activities of political parties. Further, while political parties may be engaged in "business", the personal information of voters, whether collected by the party or derived from other personal information, is not of a commercial character and PIPA[41] likely does not permit political parties to withhold it as confidential commercial information.

RECOMMENDATION 14

All political parties should, in response to individual's requests for their own personal information, provide all of the requestor's personal information under the control of the party, information about the ways in which that personal information has been and is being used by the party, and to whom the information has been disclosed.

Issue 6: Do political parties have privacy policies, and if so are they adequate?

Section 5 of PIPA requires political parties to develop and follow policies and practices to meet privacy obligations and respond to complaints. That section also requires the parties to make information available upon request about these policies, practices, and processes. My office has issued guidance[42] stating that we expect such policies to contain:

- a written commitment to be accountable for how personal information is treated and to adhere to PIPA;
- defining "personal information" under PIPA;
- explanations about what, how, and why personal information, including employee personal information, is collected;
- how consent is obtained from the individual and in what circumstances, and that consent may be withdrawn;
- limits on use and disclosure of personal information;
- the length of time personal information is retained;
- security safeguards employed to ensure personal information is kept secure;
- how individuals can exercise their right of access to their own information;
- how individuals can make a complaint if they have concerns about the handling of their personal information; and
- contact information for the individual responsible for compliance with PIPA.

[40] There is a well-established presumption that when a legislature uses two different words in a statute, they are intended to mean two different things.
[41] S. 23(3) of PIPA
[42] Guidelines for Developing a Privacy Policy Under the *Personal Information Protection Act* (PIPA), available at https://www.oipc.bc.ca/guidance-documents/1457.

4.14 Privacy policies

PRIVACY POLICIES	
Political party	**Accessibility**
Green	Privacy Policy – publicly available, applies to all activities of the party https://www.bcgreens.ca/privacy
	Elections BC policy – available to the public on request from Elections BC
Liberal	Privacy Policy – publicly available, applies to all activities of the party https://www.bcliberals.com/wp-content/uploads/2015/11/BCL-Privacy-Policy-v2.pdf
	Elections BC policy – available to the public on request from Elections BC
BC NDP	Privacy Policy - internal policy that describes the collection use and disclosure of personal information by the party; available to the public on request
	"Data Use Policy" – publicly available but only covers information collected via its website https://www.bcndp.ca/data-use
	Elections BC policy – available to the public on request from Elections BC

My investigators examined each of the political party's privacy policies for accuracy of information and completeness against the guidance from my office.

The Green Party and the Liberal Party have privacy policies available on their website that apply to all the activities of the party. While both parties meet the basic expectations of my office, each policy should be enhanced in light of the discussion below.

Combined, the BC NDP's policies meet the same general expectations set out by my office. However, the BC NDP's decision to split their privacy policies into three documents and only publicly publish the one that relates to their website traffic is not consistent with PIPA's overall objectives of transparency and accountability in this area. For one thing, the public would not be aware of the presence of two of the policies. More importantly, the policy that most comprehensively describes the BC NDP's privacy practices is not readily accessible to the public, in that its existence is not advertised. Without intimate knowledge of the BC NDP's operations, the average individual would finish reading the publicly-available Data Use Policy with an incomplete understanding of the BC NDP's privacy management. As a better practice, the BC NDP could merge the three privacy policies into a single document and make the comprehensive privacy policy publicly available.

Finding 20: All political parties developed privacy policies and practices as required by PIPA[43] and make them available to the public. However, all of the privacy policies contain inadequacies that prevent the political parties from fully meeting their obligations under the Act.

I examine my concerns with the privacy policies below and provide recommendations on how parties can come into full compliance with PIPA.

4.15 Content of the privacy policies

4.15.1 Definitions

A political party's privacy policy must describe how the party meets its legal obligations under PIPA. It should use the same definition for key terms as are defined in PIPA. A key definition is "personal information".

DEFINITIONS OF PERSONAL INFORMATION

Political party	Definition
Green	Relies upon definitions supplied by the Canadian Institute of Chartered Accountants and American Institute of Certified Public Accountants; distinguishes personally-identifiable information from personal information and lists specific items as personally-identifiable information.
Liberal	Defines personal information similarly to PIPA but states it does "not include publicly available information".
BC NDP	The "Data Use Policy" and Elections BC privacy policy do not define personal information. The internal privacy policy uses PIPA's definition of personal information, but does not include the exception for work product information.

An organization's definition of personal information in the privacy policy should be consistent with PIPA. Alternative definitions may increase the likelihood that the organization will be non-compliant with the law. For example, the Liberal Party's definition of personal information is much narrower than that in PIPA. The application of this definition could result in the party improperly collecting personal information under the mistaken belief that publicly-available information is not subject to PIPA.

[43] S. 5 of PIPA

Finding 21: All political parties' privacy policies defined terms differently than PIPA.

RECOMMENDATION 15
All political parties should update their privacy policies to provide a definition of "personal information" (and other related terms) that is consistent with PIPA.

4.15.2 Collection, use, and disclosure

Consent is a core pillar of PIPA and, as this report spells out, political parties require it for most instances of collection, use, or disclosure of personal information. Privacy policies should clearly list the purposes for which they collect, use and disclose personal information. This is necessary so that individuals can make informed choices about the personal information they provide to the parties and challenge them when they believe information is being dealt with improperly.

The Green Party and Liberal Party policies do not link the collection, use, and disclosure of voter personal information to the party's intended purpose. Instead, the policies contain broad statements such as "maintain[ing] a list of voters," "identifying issues of interest" and "identifying constituents' preferences." These descriptors do not, for example, encompass the other purposes for collection, notably creation of voter profiles and party support scores that the parties develop through data linkage and analysis outlined above. Nor do they specify what form of consent the parties rely upon to collect the information in the first place or how consent is obtained.

The BC NDP's internal and voters list data privacy policies do not provide a comprehensive description of the information collected, or the purpose for its collection. The BC NDP collects and uses large amounts of personal information from canvassing and social media interactions. However, it does not have a privacy policy that explains or addresses the collection and use of that personal information, or how the party uses that information to predict a voter's characteristics.

The BC NDP's Data Use Policy is the only policy that provides a comprehensive description of the personal information collected and used. It clearly links the information collected via the website with a purpose for its collection and an explanation for the collection. However, this policy only applies to the BC NDP's collection of personal information via its website.

Finding 22: None of the political parties' privacy policies comprehensively describe all of the personal information collected, used, and disclosed, and the purposes for the parties' activities.

RECOMMENDATION 16

All political parties should amend their privacy policies to include a comprehensive description of the personal information collected, used, and disclosed by the party, the purposes for each of those types of personal information, and how it is authorized to collect, use, or disclose that personal information under PIPA.

4.15.3 Withdrawing consent

Individuals have the right to withdraw their consent for a political party to collect, use, and disclose their personal information. Withdrawing consent clearly indicates that the individual does not wish the political party to obtain and use information about them.

The Liberal Party and the Green Party privacy policies each clearly outline the right of a person to withdraw their consent and explain the consequences of that withdrawal.

The BC NDP's internal privacy policy states that an individual may withdraw their consent, except where the party may collect without consent. The policy does not explain what information is collected with consent, and what information is collected without consent. Because of this, an individual would not be able to make a meaningful decision about withdrawing consent regarding their personal information.

Finding 23: Both the Green Party and the Liberal Party privacy policies clearly state that an individual may withdraw consent for the collection, use, and disclosure of their personal information.

Finding 24: While the BC NDP's Data Use Policy states that an individual may withdraw consent for collection, use, and disclosure of their personal information in some circumstances, it does not explain the nature of those circumstances.

RECOMMENDATION 17

All political parties should be clear about the ability to, and the consequences of, withdrawing consent for collection, use, and disclosure.

4.15.4 Access

As noted earlier, political parties are required by s. 23(1) of PIPA to provide individuals with access to their personal information under a party's control. This section also requires the party to provide information about how it used an individual's information, and the names of individuals or organizations that they disclosed this information to. Section 29 of PIPA requires

an organization to respond within 30 business days of an individual's request. Consistent with the guidance my office has issued, I expect political parties to address these processes within their privacy policies.

All three political parties' policies state the right of the individual to request their own personal information, and provide instructions on how to make that request.

Finding 25: All political parties' privacy policies inform individuals of their right under PIPA to request access to their own personal information and the timing for a response.

5 SUMMARY OF FINDINGS AND RECOMMENDATIONS

FINDING 1: The *Election Act* authorizes all political parties to collect and use the voters list and voter participation data collected at the last provincial general election/by-election from Elections BC, solely for the purpose of communicating with voters.

FINDING 2: All parties have express consent to collect basic voter information during door-to-door canvassing for the reasons stated by the canvassers.

FINDING 3: PIPA does not allow political parties to collect gender, religion, and ethnicity by observation without express consent.

FINDING 4: PIPA does not authorize the Liberal Party's current practice of collecting the personal information of third parties from other members of their household.

FINDING 5: PIPA allows political parties to collect and use telephone numbers contained in a public phone directory because they are a prescribed source of publicly-available information.

FINDING 6: All political parties conduct phone canvassing. When a political party calls a potential voter and identifies who they are and the reason for the call, the party is allowed to collect the personal information voluntarily provided by the individual in response to the canvasser's questions. The political parties are limited to using the information only for the purpose identified by the canvasser.

FINDING 7: PIPA does not authorize the Liberal Party and the BC NDP to collect third-party personal information when telephone canvassing.

FINDING 8: All of the parties have implied consent to use petition information for the purpose of furthering the objective of the petition.

FINDING 9: All parties use petition information to contact individuals who sign the petition, but only the Green Party has express consent to do so. None of the parties have consent for any additional use of petition information.

FINDING 10: PIPA allows political parties to collect, by implied consent, the contents of a social media communication posted on the party's social media page for the purpose of responding to an individual's communication.

FINDING 11: Political parties do not have implied consent to add to their database any personal information collected through social media merely because the individual has interacted with a party by liking a post or an article on a social media platform.

FINDING 12: Political parties do not get express consent to link email addresses with social media profiles.

FINDING 13: The use of personal information to predict and profile a voter's ethnicity, gender, or age is likely not authorized by PIPA without consent.

FINDING 14: PIPA does not likely allow the use of personal information collected from publicly-available sources for fundraising purposes.

FINDING 15: PIPA permits political parties to disclose personal information to a social media provider to contact individuals if those individuals had originally contacted the political party via that social media platform, or expressly consented to the collection of their email address for the purpose of being contacted via social media.

FINDING 16: PIPA does not permit political parties to disclose email addresses or other identifying information of supporters to a social media platform for data analysis or profiling without the express consent of the individual.

FINDING 17: Due to the lack of regular auditing, the Liberal Party and the BC NDP have failed to make reasonable security arrangements to prevent unauthorized access and disclosure of personal information in their custody as required by PIPA.

FINDING 18: All political parties lack the privacy training plans, and training materials necessary to ensure the protection of personal information.

FINDING 19: All the political parties had an undefined or indefinite retention period for personal information, including information that was incorrect or out of date.

FINDING 20: All political parties developed privacy policies and practices as required by PIPA and make them available to the public. However, all of the privacy policies contain inadequacies that prevent the political parties from fully meeting their obligations under the Act.

FINDING 21: All political parties' privacy policies defined terms differently than PIPA.

FINDING 22: None of the political parties' privacy policies comprehensively describe all of the personal information collected, used, and disclosed, and the purposes for the parties' activities.

FINDING 23: Both the Green Party and the Liberal Party privacy policies clearly state that an individual may withdraw consent for the collection, use, and disclosure of their personal information.

FINDING 24: While the BC NDP's Data Use Policy states that an individual may withdraw consent for collection, use, and disclosure of their personal information in some circumstances, it does not explain the nature of those circumstances.

FINDING 25: All political parties' privacy policies inform individuals of their right under PIPA to request access to their own personal information and the timing for a response.

RECOMMENDATION 1: All political parties should ensure door-to-door canvassers do not collect the personal information of voters, including but not limited to gender, religion, and ethnicity information unless that voter has consented to its collection.

RECOMMENDATION 2: All political parties should ensure that door to door canvassers only collect the personal information of individuals they speak to directly and who provide that information voluntarily.

RECOMMENDATION 3: All political parties should ensure that telephone canvassers only collect the personal information of individuals they speak to directly.

RECOMMENDATION 4: All political parties should get express consent for the collection of personal information in a petition if that personal information is going to be used for any purpose other than the obvious purpose of promoting the issue or objective of the petition.

RECOMMENDATION 5: All political parties should prominently provide a succinct and simple explanation of the purposes for gathering the personal information at the point of collection.

RECOMMENDATION 6: All political parties should ensure they only collect personal information from social media with the consent of the individual.

RECOMMENDATION 7: All political parties should be transparent about how they profile voters.

RECOMMENDATION 8: All political parties should collect publicly-available personal information without consent only if there is a reasonable connection between the purpose for collection and the purpose for which the information is publicly available.

RECOMMENDATION 9: All political parties should only disclose email addresses to social media providers with express consent.

RECOMMENDATION 10: All political parties should implement regular audits for all electronic systems containing personal information.

RECOMMENDATION 11: All political parties should provide a detailed employee and volunteer privacy training plan and associated materials for review and comment by my office and Elections BC.

RECOMMENDATION 12: All political parties should review the state of their records with a view to destroying out of date information about voters.

RECOMMENDATION 13: All political parties should develop clear retention policies for personal information and should routinely review the personal information in their custody to determine whether its continued retention is authorized by PIPA.

RECOMMENDATION 14: All political parties should, in response to individual's requests for their own personal information, provide all of the requestor's personal information under the control of the party, information about the ways in which that personal information has been and is being used by the party, and to whom the information has been disclosed.

RECOMMENDATION 15: All political parties should update their privacy policies to provide a definition of "personal information" (and other related terms) that is consistent with PIPA.

RECOMMENDATION 16: All political parties should amend privacy policies to include a comprehensive description of the personal information collected, used, and disclosed by the party, the purposes for each of those types of personal information, and how it is authorized to collect, use, or disclose that personal information under PIPA.

RECOMMENDATION 17: All political parties should be clear about the ability to, and the consequences of, withdrawing consent for collection, use, and disclosure.

6 CONCLUSION

Robust communication with the electorate is vital to a political party's existence. This is in the public interest, in the interest of democracy, and not just the political self-interest of the parties.

However, if political parties and the public take away one thing from this report, it is that this communication should be a fully transparent two-way street. A one sided dialogue in which the public is kept largely in the dark about the significant amounts of personal information collected and used about them is not sustainable legally or ethically.

In the competitive world of political campaigning it is understandable that political parties would explore technological platforms and tools to refine voter profiling and targeting. However, this cannot be without limits. Political parties disclosing personal information of supporters to Facebook without consent, or processing supporters' information to determine ethnicity demonstrate why boundaries are required. While these are concerning scenarios, recent developments in the US and UK suggest they may only be the thin edge of the wedge when it comes to privacy-invasive techniques used to gain electoral advantage.

If we are to avoid a perilous future path, all political parties must focus on each and every aspect of how they handle the personal information of British Columbians. This is not only a matter of legal compliance, but also of the public interest.

Political parties, from senior party officials to volunteer canvassers, must stand ready to demonstrate compliance with their privacy responsibilities. This includes everything from being absolutely transparent about the personal information they collect to providing individuals full right of access to their own information.

My office is committed to providing guidance to the parties as they work to improve protecting the personal information of BC's 3.3 million registered voters. In doing so, I intend to work with BC's Chief Electoral Officer. Prior to receiving a voters list from Elections BC, parties must agree to the terms of a privacy policy acceptable to the Chief Electoral Officer. I have begun discussions with the Chief Electoral Officer about ways our offices can work together to strengthen the parties' understanding of their PIPA obligations before they receive the list.

A further idea I believe worthy of consideration is a code of practice governing how political parties handle personal information. My colleague, the Information Commissioner for the United Kingdom, has recently called on the British Parliament to impose such a code. She proposes that it would deal with matters such as personal data analytics, online advertising, and the use of social media.

The power to impose such a code does not exist in BC. However, a code that is voluntary along the lines of that proposed in the UK could be agreed to by all parties at the time of accepting

the electronic voters list. Its purpose, among other things, would be to ensure a common understanding of what is and is not allowed by BC's privacy and election legislation. Its effect could increase public trust in how personal information is handled. Myself and BC's Chief Electoral Officer have discussed jointly advancing this idea to political parties.

I intend to follow up with the three political parties investigated in this report in six months' time. I will review what they have done in response to the recommendations set out and then determine whether a more detailed audit of party systems, data bases or practices is required. I look forward to continuing to work with the parties.

I would like to thank my office's policy director Bradley Weldon and policy analyst Christopher Gillespie for their considerable efforts on this project. Lastly, I wish to acknowledge Professor Colin Bennett, a member of my External Advisory Board who has been generous in sharing his globally-recognized expertise on the issues raised in this investigation report.

February 6, 2019

ORIGINAL SIGNED BY

Michael McEvoy
Information and Privacy Commissioner
for British Columbia