



Protecting privacy. Promoting transparency.

Order P17-03

SURREY CREEP CATCHER

Drew McArthur
Acting Information and Privacy Commissioner

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Summary: Two individuals complained that an organization improperly collected, used and disclosed their personal information. The organization had induced each individual to have online communication with a fictitious woman over the age of 18, subsequently conveyed that this decoy was under the age of 16, and arranged a meeting to confront each man for attempting to lure a minor. The organization video-recorded the encounter and disseminated the video on social media. The Acting Commissioner found that the organization collected, used and disclosed the complainants' personal information contrary to the *Personal Information Protection Act* because it had not obtained their consent and had no other authority to collect, use or disclose their personal information. He ordered the organization to stop collecting, using and disclosing the complainants' personal information, to destroy all of their personal information in its custody or under its control, and to ask others who disseminated the information to remove and destroy it as well.

Statutes Considered: **BC:** *Personal Information Protection Act*, S.B.C. 2003, c. 63, ss. 1, 3(2)(b), 6, 7, 7(1), 7(3)(b), 8, 8(1), 8(1)(a), 8(1)(b), 10, 10(1), 11, 12, 12(1)(c), 14, 15, 15(1)(c), 17, 18, 18(1)(c), 52(3)(e), 52(3)(f) and 52(4). **AB:** *Personal Information Protection Act*, S.A. 2003, c. P-6.5, s. 4(3)(c). **CAN:** *Criminal Code*, R.S.C. 1985, c. C-46, s. 172.1; *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, ss. 4(2)(c) and 7(1)(b).

Authorities Considered: **BC:** Order P06-01, 2006 CanLII 13537 (BC IPC); Order P06-05, [2006] B.C.I.P.C.D. No. 39 (QuickLaw); Order P06-06, 2006 CanLII 42695 (BC IPC); Order P12-01, 2012 BCIPC 25 (CanLII). **AB:** Order P2007-014, 2008 CanLII 88803 (AB OIPC). **CAN:** PIPEDA Case Summary #2004-268; PIPEDA Report of

Findings #2014-006, 2014 CanLII 57576 (PCC); PIPEDA Report of Findings #2015-002, 2015 CanLII 33260 (PCC).

Cases Considered: *A.T. v. Globe24h.com*, 2017 FC 114 (CanLII); *Conservative and Unionist Central Office v. Burrell (Inspector of Taxes)*, [1982] 2 All E.R. 1 (C.A.); *Morgan v. Alta Flights (Charters) Inc.*, 2005 FC 421 (CanLII); *United Food and Commercial Workers, Local 401 v. Alberta (Information and Privacy Commissioner)*, 2011 ABQB 415 (CanLII); *United Food and Commercial Workers, Local 401 v. Alberta (Attorney General)*, 2012 ABCA 130 (CanLII); *Alberta (Information and Privacy Commissioner) v. United Food and Commercial Workers, Local 401*, 2013 SCC 62, [2013] 3 S.C.R. 733 (CanLII).

Other Sources Considered: Ethics Advisory Committee of the Canadian Association of Journalists, *What is Journalism?* (Canadian Association of Journalists, June 15, 2012); CTV W5, *Creep Out*, (Bell Media, February 18, 2017).

INTRODUCTION

[1] This inquiry involves Surrey Creep Catcher (the Organization),¹ one branch or chapter of an association that purports to protect children by finding and confronting potential pedophiles or child predators, whom it calls “creeps.” Its operations frequently involve video-recording the confrontation and subsequently disseminating the video on social media.

[2] Two individuals² complained that, in its dealings with them, the Organization contravened the *Personal Information Protection Act* (PIPA) by collecting, using and/or disclosing their personal information without their consent or other authority. They filed separate complaints with my office, which I have chosen to address together in this Order, given their factual similarity.

ISSUES

[3] The main issue in this inquiry is whether PIPA authorized the Organization to collect, use and disclose the Complainants’ personal information.

[4] The Organization also raised the preliminary jurisdictional issue as to whether PIPA applies to the Organization’s collection, use and disclosure of the Complainants’ personal information.

¹ The media sometimes refers to Surrey Creep Catchers, in the plural.

² This Order refers to the complainants as “Complainant 1” and “Complainant 2,” and collectively “the Complainants.”

DISCUSSION

Background

[5] As reflected in its stated mandate,³ the members of the Organization pose under the name of a fictitious person, or decoy, looking for social engagement with potential “creeps” online. After an individual responds, the decoy represents himself or herself as underage and arranges to meet the individual, usually in a public place, where members of the Organization confront the individual and video-record the encounter. The Organization then posts on the internet the video of the encounter and encourages its members and supporters to share the video on social media.

[6] In summer 2016, the Organization posted an advertisement under a female name in the “Strictly Platonic” section of Craigslist. Complainant 1, an adult male, responded. In its online communications with him, the Organization represented itself as a 15-year-old girl and suggested that the two of them “chill.” They agreed to meet at a public place, at which the president of the Organization and two other individuals confronted Complainant 1 and video-recorded the encounter on one or more handheld devices.

[7] Later that day, the Organization uploaded a copy of that video to one of its public Facebook pages. The Facebook post also contained screenshots of a portion of the online communications between Complainant 1 and the decoy. The Organization later added commentary from members of the Organization and others stating that Complainant 1 had committed a crime by attempting to lure and meet with a minor for sexual purposes. The Organization also posted the video on its website and YouTube channel, encouraging viewers to share it online.

[8] In response to Complainant 1’s requests to remove the video and his other personal information from the internet in the months following the incident, the Organization re-posted the video and again encouraged others to share it online. After Complainant 1 filed his complaint with my office, the Organization again re-posted the video on Facebook, along with a copy of the complaint.

³ At the time of the Complainant’s complaints, the Organization’s website and main Facebook page stated that its members “go online in social media rooms posing as underage Children Looking for potential predators”; that “We Record everything from the Chat Logs To the Meeting Video”; and that “We Post Them Online For The Public To see as they have the right to know who these people are and that there [sic] in there [sic] area”: www.surreycreepcatcher.com/about (retrieved June 14, 2017) and www.facebook.com/pg/surreycreepcatcher/about (retrieved June 14, 2017). The Organization has subsequently changed the excerpt on its website and taken down its main Facebook page.

[9] Complainant 2, also an adult, has a condition that affects his cognitive abilities and behaviour. In fall 2016, he posted an advertisement on Craigslist, seeking to meet a woman his own age. The Organization responded to the advertisement, posing as a 20-year-old woman. This decoy subsequently indicated that she had a 14-year-old friend and proposed a meeting. They arranged to meet in a public place, where the president and two other individuals confronted him and video-recorded the encounter. When Complainant 2 fled, the Organization's representatives pursued him, in the course of which he appears to be struck by a motor vehicle. The pursuit was also video-recorded.

[10] The Organization live-streamed the video of the confrontation and pursuit involving Complainant 2 on Facebook. During the broadcast, and in later social media posts, members of the Organization and others suggested that the Complainant had inappropriately attempted to lure and meet with a minor for sexual purposes. The Organization also posted the video on YouTube. Complainant 2's mother asked the Organization to remove the videos from the internet, but the Organization refused.

Personal Information at Issue

[11] Under s. 1 of PIPA, "personal information" means information about an identifiable individual. The Complainants' personal information at issue in this inquiry consists of that in written communications as part of online chatting with the Organization, the video-recordings of the Complainants the Organization captured, and comments from members of the Organization and members of the general public posted on social media.

[12] For example, the personal information of Complainant 1 contained in the chat logs between the Organization and him include his name, age, telephone number, personal email address, home city, occupation, hobbies, interests, and his physical description. The personal information found in the Organization's videos of the Complainants consists of each Complainant's image, speech and behaviour, as well as information that each Complainant conveyed about himself during the confrontations. The personal information found in comments made by members of the Organization and others consist of opinions about the Complainants to the effect that they had acted inappropriately, and in the case of Complainant 2, opinions about his cognitive abilities. Opinions qualify as information about identifiable individuals, and are therefore personal information.⁴

[13] Finally, in the case of Complainant 1, his personal information at issue in this matter also includes that found in the complaint that he made to my office, a copy of which the Organization posted on Facebook after receiving it as part of the complaint process of my office.

⁴ Order P06-06, 2006 CanLII 42695 (BC IPC) at para. 12.

Preliminary Issue: Does PIPA apply to the Organization’s collection, use or disclosure of the Complainants’ personal information?

Collection, use or disclosure for a journalistic purpose – s. 3(2)(b)

[14] The Organization submits that PIPA does not apply to it because it was carrying out its activities for journalistic purposes. Section 3(2)(b) reads:

3(2) This Act does not apply to the following:

...

(b) the collection, use or disclosure of personal information, if the collection, use or disclosure is for journalistic, artistic or literary purposes and for no other purpose;

[15] The Organization submits that journalism is the production and distribution of reports on the interaction of events, facts, ideas and people that are news of the day, and that inform the public. It also submits that it collects the personal information of individuals, such as the Complainants, for the purposes of identifying them at the agreed meeting place, and of making the public aware of their identities through “journalistic interviews,” during which the interviewee may leave at any time. It notes that many people watch the live-stream interviews, which it archives for review. The Organization indicates that its intention is to bring light to the overwhelming amount of adults luring minors on the internet for sexual purposes. It says that its purpose is to inform the public about child predators who are active in their neighbourhood.

[16] In response, Complainant 1 submits that journalism has criteria beyond simply the public dissemination of information, such as truthfulness, accuracy, objectivity, impartiality, fairness and public accountability. He argues that the Organization’s public embarrassment of individuals on social media does not qualify as serious journalism about a serious topic.

[17] Complainant 2 similarly submits that journalism is more than merely making facts public, even if there is a purported public interest in those facts. Journalism requires responsible reporting and consideration of the facts, their context and their impact. He argues that merely posting correspondence and confrontations on the internet does not qualify as journalism.

[18] In order for s. 3(2)(b) to apply, the Organization must be collecting, using, or disclosing personal information for a journalistic purpose. In *A.T. v. Globe24h.com*, the Federal Court of Canada considered what constitutes

journalism for the purposes of the analogous section of the *Personal Information Protection and Electronic Documents Act* (PIPEDA).⁵

The “journalistic” purpose exception is not defined in PIPEDA and it has not received substantive treatment in the jurisprudence. The OPCC submits that the Canadian Association of Journalists has suggested that an activity should qualify as journalism only where its purpose is to (1) inform the community on issues the community values, (2) it involves an element of original production, and (3) it involves a “self-conscious discipline calculated to provide an accurate and fair description of facts, opinion and debate at play within a situation”. Those criteria appear to be a reasonable framework for defining the exception. None of them would apply to what the respondent has done.⁶

[19] I use the above three criteria to determine whether an organization is carrying out its activities for a journalistic purpose under s. 3(2)(b) of PIPA.

[20] In the circumstances of the cases here, I do not need to address the first two criteria, as I find that the Organization’s activities do not meet the third. The Organization submits that it publishes the videos “to bring light to the overwhelming amount of adult luring minors off the internet for sexual purposes” and to make the public aware “that these creeps come in all ages, sizes, nationalities, and creeds.” However, I find that these activities do not involve any effort to provide an accurate and fair description of the facts, opinion and debate at play within the particular context. The Organization simply reproduces the chats and videos without adding any meaningful commentary or analysis, but rather only brief and cursory statements.

[21] In *United Food and Commercial Workers, Local 401 v. Alberta (Attorney General)*, a case similarly dealing with an organization’s collection of personal information by way of video-recordings and posting images on the internet, the Alberta Court of Appeal considered the analogous section of Alberta’s *Personal Information Protection Act*,⁷ writing as follows:

⁵ S.C. 2000, c. 5, s. 4(2)(c), which refers to “personal information that the organization collects, uses or discloses for journalistic, artistic or literary purposes and does not collect, use or disclose for any other purpose.”

⁶ *A.T. v. Globe24h.com*, 2017 FC 114 (CanLII) at para. 68. The Federal Court accepted the three criteria set out by the Office of the Privacy Commissioner of Canada in PIPEDA Report of Findings #2015-002 (Complaints against Globe24h.com), 2015 CanLII 33260 (PCC) at para. 52, which had in turn adopted the criteria the Ethics Advisory Committee of the Canadian Association of Journalists proposed in *What is Journalism?* (Canadian Association of Journalists, June 15, 2012).

⁷ S.A. 2003, c. P-6.5, s. 4(3)(c), which states that the Act does not apply to “the collection, use or disclosure of personal information if the collection, use or disclosure, as the case may be, is for artistic or literary purposes and for no other purpose.”

In this case it is not helpful to try and force what the union was trying to do into the “journalism” exemption. While the union was, in part, attempting to communicate information to its members and others, that was not the primary or exclusive purpose for recording and using the picket line videos. The union was not primarily engaged in a journalistic activity. This appeal is substantively about labour relations, collective bargaining, and the economic dynamics of a strike. Just because the union might have to communicate with its members and the public about the strike in order to accomplish its labour relations objectives does not turn the whole exercise into journalism. While all journalism may be a form of expression, not all expression is journalism.⁸

[22] The Court of Appeal of Alberta concluded by emphasizing that “[n]ot every piece of information posted on the Internet qualifies [as journalism].”⁹

[23] In the matters at issue here, I take a similar view. The Organization posted videos of the Complainants and other information about them, but this does not automatically constitute journalism. Again, there is no fair attempt to describe or analyze the facts, or to provide opinion or debate. The purpose of the exercise is to entrap individuals whom the Organization believes are attempting to lure a minor and to publicly denounce them.

[24] Similar to the case in *United Food and Commercial Workers, Local 401 v. Alberta (Attorney General)*, the Organization’s activities here are essentially intended to subject the Complainants to “threats,” “ridicule” and “derision.”¹⁰ I note a further similarity to another matter the Office of the Information and Privacy Commissioner of Alberta addressed. It found a teachers’ association’s purported intention to explore and communicate a newsworthy issue, by publishing in a newsletter the names and places of work of individuals no longer bound by the association’s code of conduct, was effectively to be an intention to punish them for withdrawing from membership in the association.¹¹ In short, the Organization’s true purpose in collecting, using and disclosing personal information is to “name and shame” those whom it considers to be creeps, rather than to offer a journalistic perspective on the issue.

⁸ *United Food and Commercial Workers, Local 401 v. Alberta (Attorney General)*, 2012 ABCA 130 (CanLII) at para. 57, appeal substantially dismissed *Alberta (Information and Privacy Commissioner) v. United Food and Commercial Workers, Local 401*, 2013 SCC 62, [2013] 3 S.C.R. 733 (CanLII).

⁹ *Ibid.* at para. 59.

¹⁰ *United Food and Commercial Workers, Local 401 v. Alberta (Information and Privacy Commissioner)*, 2011 ABQB 415 (CanLII) at paras. 132 and 134, varied as to remedy *United Food and Commercial Workers, Local 401 v Alberta (Attorney General)*, 2012 ABCA 130 (CanLII).

¹¹ Order P2007-014, 2008 CanLII 88803 (AB OIPC) at paras. 17 and 31.

[25] This raises another important consideration. Even if it might be said that there is some element of journalism in the Organization's activities, s. 3(2)(b) of PIPA requires that the purpose of the activities be *solely* or *exclusively* journalistic.

[26] Here, the Organization itself indicates in its submissions that it collects, uses and discloses the personal information of its targets for purposes apart from a journalistic one. It says, for example, that the video-recordings of the encounters between it and its targets are intended to protect all parties from false claims of assault or excessive use of force "should a citizen's arrest become necessary." As I noted above, the Complainants likewise cite the Organization's purpose of examining the information collected in its online chats is to determine whether the individual is attempting to lure a minor. Moreover, they reference its purpose of imposing negative consequences on those whom it considers creeps by disseminating the videos and encouraging others to do the same.

[27] I conclude that s. 3(2)(b) of PIPA does not apply, as the Organization's collection, use and disclosure of the Complainants' personal information were not for a journalistic purpose, or alternatively, were not exclusively for a journalistic purpose.

Definition of "organization" – s. 1

[28] PIPA applies to all organizations. In this case, the Organization does not dispute that it meets the definition of "organization" for the purposes of PIPA, and I find that it does meet the definition. Under s. 1, an "organization" includes "a person, an unincorporated association, a trade union, a trust or a not for profit organization," but does not include (among other things) "an individual acting in a personal or domestic capacity."

[29] The Organization may qualify as an unincorporated association, which case law defines as:

[T]wo or more persons bound together for one or more common purposes, not being business purposes, by mutual undertakings, each having mutual duties and obligations, in an organisation which has rules which identify in whom control of it and its funds rests and upon what terms and which can be joined or left at will.¹²

¹² *Conservative and Unionist Central Office v. Burrell (Inspector of Taxes)*, [1982] 2 All E.R. 1 (C.A.). This case further stated that "[t]he bond of union between the members of an unincorporated association has to be contractual". I consider, here, that the mutual undertakings, rules about who can join and consensus about who controls funds is the result of at least an implied contract that binds or links the members of the Organization.

[30] In its submissions, the Organization writes that its purposes are to prevent child luring, educate about its dangers, and increase public awareness. These are common purposes in that the Organization's members are united with these objectives in their efforts to identify, confront and publicly name individuals whom they believe to be luring minors. I further find that the Organization's members are bound by mutual undertakings, duties and obligations. For instance, at the time of the Complainant's complaints,¹³ the Organization associated itself with a national Creep Catchers group that set out "rules" such as:

We do not condone or endorse any harm coming to these individuals, minus public shaming and outing [sic]. Any such violence towards anyone portrayed in our content will be frowned upon and does not benefit our cause!

Share the videos, share the posts, mock, name call, point them out in public (make sure 100% it's them though please!)¹⁴

[31] It is also apparent that individuals are free to join or leave the Organization as they choose. They may or may not assist by being a decoy, video-recording the encounter with a target, making comments on behalf of the Organization on social media, participating in fundraising, and the like.

[32] The Organization also has an individual, its president, who has control of the Organization's funds. In a televised interview, he stated that he manages money earned from the sale of branded merchandise like hoodies and sweatpants, and from funds raised by donations, and that he spends it on operational costs such as food, gas and cell phone bills.¹⁵

[33] Because the Organization sells merchandise, both at fundraisers and through a "store" on its website, it may also qualify as a commercial enterprise, which would make it an organization for the purposes of PIPA.¹⁶ The Organization also possibly earns revenue through advertisements on the

¹³ www.surreycreepcatcher.com/about. Specifically, at the time of the Complainant's complaints, the Organization's website stated that "Creep catchers Canada is a group across Canada," meaning that it was one of its chapters. The Organization has since revised its website to state that the Organization is "[u]naffiliated with any other catching group."

¹⁴ www.creepcatchers.ca. This domain name now diverts to a website "dedicated to providing information on how Creep Catchers operate, the [proper] interpretations of the Criminal Code of Canada and Canadian Law, as well as information and resources to combat both the Creep Catchers and Online Predators."

¹⁵ CTV W5, *Creep Out*, (Bell Media, February 18, 2017).

¹⁶ See also Order P06-01, 2006 CanLII 13537 (BC IPC) at paras. 17-18, in which former Commissioner Loukidelis indicated that, while an entity need not be carrying out a commercial activity in order to be an "organization" under PIPA, an individual carrying out a commercial activity will not be considered to be acting in a personal or domestic capacity.

websites on which it posts and shares its videos, depending on the number of views.¹⁷

[34] To the extent that it further establishes that the Organization is an “organization” under PIPA, Complainant 1 notes that it has made a trade-mark application for the word “Creep Catcher.”¹⁸

[35] Given all of the foregoing, I consider that the president and other members of the Organization are not simply acting in their personal or domestic capacities. PIPA applies to the collection, use and disclosure of the Complainants’ personal information by the Organization.

Main Issue: Did the Organization collect, use and disclose the Complainants’ personal information in accordance with, or contrary to, PIPA?

[36] The Organization collected, used and disclosed the Complainants’ personal information at various times. It collected their personal information during its online chats with them, and through the video-recordings of the subsequent confrontations. It used the Complainants’ personal information to determine whether they were “creeps,” and to arrange the meetings with them. It disclosed their personal information when it posted, as the case may be, the videos, portions of the online chats, and complaint made to my office. The Organization both collected and disclosed comments made by members and the general public about the Complainants on the Organization’s social media sites.

[37] PIPA prohibits the collection, use or disclosure of an individual’s personal information unless he or she has consented, whether explicitly or implicitly, or unless there is authority elsewhere in PIPA that does not require consent. I will first review whether there was consent in the Complainants’ circumstances, and then review whether there was authority to collect, use or disclose their personal information without their consent.

¹⁷ CTV W5, *Creep Out*, (Bell Media, February 18, 2017).

¹⁸ Innovation, Science and Economic Development Canada, Application number 1804399, filed October 12, 2016 (<https://www.ic.gc.ca/app/opic-cipo/trdmrks/srch/home>). The application states that the Organization has used the term “Creep Catcher” since July 1, 2015, and describes the Organization as a “[n]on-profit organization dedicated to child safety in Canada [and a] cause for the prevention and protection of children against child predators and abusers.” A registry search did not reveal that the Organization is registered as a not-for-profit organization in British Columbia, but if it were, it would also be an “organization” for the purposes of PIPA on that basis.

Sub-Issue One: Did the Complainants consent to the collection, use or disclosure of their personal information by the Organization?

Consent to collection, use and disclosure – ss. 6 to 10

[38] The relevant parts of ss. 6 to 10 of PIPA read as follows:

Consent required

6 (1) An organization must not

- (a) collect personal information about an individual,
- (b) use personal information about an individual, or
- (c) disclose personal information about an individual.

(2) Subsection (1) does not apply if

- (a) the individual gives consent to the collection, use or disclosure,
- (b) this Act authorizes the collection, use or disclosure without the consent of the individual, or
- (c) this Act deems the collection, use or disclosure to be consented to by the individual.

Provision of consent

7 (1) An individual has not given consent under this Act to an organization unless

- (a) the organization has provided the individual with the information required under section 10 (1), and
- (b) the individual's consent is provided in accordance with this Act.

...

(3) If an organization attempts to obtain consent for collecting, using or disclosing personal information by

- (a) providing false or misleading information respecting the collection, use or disclosure of the information, or
- (b) using deceptive or misleading practices

any consent provided in those circumstances is not validly given.

Implicit consent

8 (1) An individual is deemed to consent to the collection, use or disclosure of personal information by an organization for a purpose if

(a) at the time the consent is deemed to be given, the purpose would be considered to be obvious to a reasonable person, and

(b) the individual voluntarily provides the personal information to the organization for that purpose.

...

Required notification for collection of personal information

10 (1) On or before collecting personal information about an individual from the individual, an organization must disclose to the individual verbally or in writing

(a) the purposes for the collection of the information, and

(b) on request by the individual, the position name or title and the contact information for an officer or employee of the organization who is able to answer the individual's questions about the collection.

...

(3) This section does not apply to a collection described in section 8 (1) or (2).

[39] With respect to its collection of information during online chats, the Organization writes that the targets “willingly share” information, thereby suggesting that the Complainants consented to the collection of their personal information during the chats.

[40] Section 7(1) of PIPA states that an individual has not given consent unless the organization has provided the individual with the information required under s. 10(1), which in turn includes the purpose for the collection. Section 8(1) provides an exception for implicit consent which is where the purpose for collection would be considered to be obvious to a reasonable person, and the individual voluntarily provides the personal information for that purpose.

[41] I find that the Complainants did not consent to the collection or use of their personal information that they conveyed in their online chats with the Organization’s decoy. While the Complainants voluntarily provided their personal information, they were not, and could not have been, aware of the true purposes for the collection and use and therefore neither explicitly nor implicitly consented. The Organization did not notify the Complainants of any purpose. Furthermore, a reasonable person would not consider that the purpose of providing personal information in the context of the Craigslist advertisements was in order for the Organization to determine, confront or catch those whom it suspects of

attempting to lure a minor. A reasonable person would conclude that the sharing of all personal information was for the purpose of establishing a social relationship.

[42] As for the collection, use and disclosure of the Complainants' personal information in the video-recordings, the Organization says that it will tell its targets that they are being broadcast on social media, as well as that the purpose of the video-recording is to inform the public about child predators, or to defend against false accusations of assault.

[43] The question is whether the content and timing of these statements conform to the statutory requirements set out in PIPA, so as to establish that either or both of the Complainants consented. In short, the purposes of collection, which may then permit subsequent uses and disclosures, must be the true purposes of collection. Moreover, the Organization must either convey the purpose prior to when consent is actually given [s. 10(1)] or the purpose must be obvious at the moment that consent is deemed to be given [s. 8(1)].

[44] Complainant 1 submits that the Organization told him that the purpose of making the video was to prevent or document any violence that might arise from the confrontation. However, the purpose was in fact to broadcast the video on the internet, an intention that the Organization only revealed after it had started the video-recording. Complainant 1 notes that, in online forums, the president of the Organization suggested that he consented to the broadcast of his personal information partway through the video-recording. Specifically, when the president said "We're gonna put you on Facebook, we're gonna put you on YouTube... we're gonna put you all over the place," Complainant 1 responded "no problem."¹⁹

[45] I find that Complainant 1 did not consent to the collection of his personal information in the video-recording up to the point at which he said "no problem." The video-recording commenced without disclosure by the Organization of the purpose of making it, and the purpose was not otherwise obvious. As for the possibility of consent after the Complainant said "no problem," he submits that he was merely meaning to convey that he had done nothing wrong. On my review of the video, his words do not appear to me to be an indication of consent to the Organization's continued recording or later posting of the video.

[46] I find that Complainant 2 did not consent to the collection, use or disclosure of his personal information in the video-recording of him. During his encounter with the Organization, he expressly asked it not to record or broadcast the video.²⁰

¹⁹ Video of Complainant 1.

²⁰ Video of Complainant 2.

[47] I also find that any purported consent on the part of either Complainant was nullified because the Organization provided false or misleading information and used deceptive or misleading practices. Section 7(3) of PIPA states that, if this occurs in the course of obtaining consent for collecting, using or disclosing personal information, any consent provided in those circumstances is not valid. Here, the Organization deceived the Complainants into believing that they were communicating online with someone other than one of the Organization’s members. By effectively ambushing them, it commenced the video-recordings in a deceptive manner. It further misled them by suggesting that the video-recordings were being made for purposes other than dissemination or live-streaming.

[48] I conclude that neither Complainant consented to the collection, use or disclosure of his personal information. Therefore, ss. 6, 7, 8, and 10 of PIPA did not authorize the Organization to collect, use or disclose the Complainants’ personal information.

Sub-Issue Two: Was the Organization authorized to collect, use or disclose the Complainants’ personal information without their consent?

Authority to collect, use and disclose without consent – ss. 12, 15 and 18

[49] The Organization writes that the Complainants “were subjects in a ‘sting’ to catch adults ... who are willing to break the law in order to lure minors (or persons the creep believes to be a minor),” which is an offence under the *Criminal Code*.²¹ This submission raises the possibility that the Organization was authorized to collect, use and disclose the Complainant’s personal information without their consent, on the basis of the following provisions of ss. 12, 15 and 18 of PIPA:

Collection of personal information without consent

12 (1) An organization may collect personal information about an individual without consent or from a source other than the individual, if

...

²¹ R.S.C. 1985, c. C-46, s. 172.1, which reads: “Every person commits an offence who, by a means of telecommunication, communicates with (a) a person who is, or who the accused believes is, under the age of 18 years, for the purpose of facilitating the commission of an offence with respect to that person under subsection 153(1), section 155, 163.1, 170, 171 or 279.011 or subsection 279.02(2), 279.03(2), 286.1(2), 286.2(2) or 286.3(2); (b) a person who is, or who the accused believes is, under the age of 16 years, for the purpose of facilitating the commission of an offence under section 151 or 152, subsection 160(3) or 173(2) or section 271, 272, 273 or 280 with respect to that person; or (c) a person who is, or who the accused believes is, under the age of 14 years, for the purpose of facilitating the commission of an offence under section 281 with respect to that person.”

(c) it is reasonable to expect that the collection with the consent of the individual would compromise the availability or the accuracy of the personal information and the collection is reasonable for an investigation or a proceeding,

Use of personal information without consent

15 (1) An organization may use personal information about an individual without the consent of the individual, if

...

(c) it is reasonable to expect that the use with the consent of the individual would compromise an investigation or proceeding and the use is reasonable for purposes related to an investigation or a proceeding,

Disclosure of personal information without consent

18 (1) An organization may only disclose personal information about an individual without the consent of the individual, if

...

(c) it is reasonable to expect that the disclosure with the consent of the individual would compromise an investigation or proceeding and the disclosure is reasonable for purposes related to an investigation or a proceeding,

[50] Sections 12(1)(c), 15(1)(c) and 18(1)(c) each refer to an “investigation.” In turn, s. 1 of PIPA defines “investigation” as follows:

“investigation” means an investigation related to

- (a) a breach of an agreement,
- (b) a contravention of an enactment of Canada or a province,
- (c) a circumstance or conduct that may result in a remedy or relief being available under an enactment, under the common law or in equity,
- (d) the prevention of fraud, or
- (e) trading in a security as defined in section 1 of the Securities Act if the investigation is conducted by or on behalf of an organization recognized by the British Columbia Securities Commission to be appropriate for carrying out investigations of trading in securities,

if it is reasonable to believe that the breach, contravention, circumstance, conduct, fraud or improper trading practice in question may occur or may have occurred.

[51] In this inquiry, the Organization argues that it was conducting an investigation of each Complainant with respect to his alleged contravention of an enactment of Canada, as contemplated in paragraph (b) above.

[52] Sections 12(1)(c), 15(1)(c) and 18(1)(c) state that the collection, use and disclosure of personal information must be “reasonable for an investigation,” or “reasonable for purposes related to an investigation.” The definition of “investigation” states that there is no investigation for the purposes of PIPA unless “it is reasonable to believe that the breach, contravention... may occur or may have occurred.” An overarching requirement throughout all of these provisions is that, in order for an investigation to be reasonable and therefore constitute an investigation for the purpose of PIPA, a cause to investigate in the circumstances of the particular case must first exist. An organization must have a reasonable belief that the individual who is the subject of the investigation contravened a law, or that he or she may do so.

[53] Former Commissioner Loukidelis explicitly articulated this approach in Order P06-05, where an organization retained a private investigator to look into the conduct of three complainants with whom it had an employment or contractor relationship. A client file indicated that the complainants had been using their positions within the organization to establish several rival competitive businesses. The former Commissioner stated the following when determining that the organization could rely on ss. 12(1)(c), 15(1)(c) and 18(1)(c):

Despite the complainants’ contention that there was no basis for the organization to investigate their activities, in light of the material before me, I find that the organization had cause to investigate, and was investigating, whether the complainants had breached their agreements when it reviewed and copied their email communications. [...] ²²

[54] Section 7(1)(b) of PIPEDA²³ contains similar wording to s. 12(1)(c) of PIPA, and has likewise been interpreted to include a requirement that “an organization must have substantial evidence to support the suspicion that the [individual] is engaged in wrongdoing” before collecting his or her personal information without consent.²⁴

²² Order P06-05, [2006] B.C.I.P.C.D. No. 39 (QuickLaw) at para. 38.

²³ Section 7(1)(b) of PIPEDA states that an organization may collect personal information without the knowledge or consent of the individual if “it is reasonable to expect that the collection with the knowledge or consent of the individual would compromise the availability or the accuracy of the information and the collection is reasonable for purposes related to investigating a breach of an agreement or a contravention of the laws of Canada or a province.”

²⁴ PIPEDA Case Summary #2004-268 at para. 16, upheld in *Morgan v. Alta Flights (Charters) Inc.*, 2005 FC 421 at para 9. See also PIPEDA Report of Findings #2014-006, at para. 13, where a landlord “reasonably anticipated” that a breach of the rental agreement had occurred.

[55] Returning to the circumstances of this inquiry, the Organization submits that it collects the personal information of individuals “for the purposes of identifying them at the agreed meeting place, and to make the public aware of who [they] are.” It says that it informs individuals that they have been caught breaking the law, and that the video of the encounter and relevant correspondence are made available to the public and sometimes to law enforcement. The Organization submits that, without the online decoy, it is likely that these individuals would find an actual young person to lure.

[56] Complainant 1 submits that the practice of seeking information from dozens of individuals responding to an ostensibly adult advertisement, to provide them with an opportunity to commit a crime, cannot be considered an “investigation” under PIPA. Rather, it amounts to random surveillance or a fishing expedition prior to obtaining any evidence of possible unlawful activity.

[57] Complainant 2 likewise submits that the Organization was not carrying out an “investigation” as defined in PIPA. He writes that the Organization’s goal was not to investigate potential criminal conduct, but to engineer an opportunity to publicly shame someone. He submits that the fact that the Organization posted his personal information, instead of turning its recordings and correspondence over to police, reveals its true purpose for collecting, using and disclosing his personal information.

[58] In my view, the Organization did not have a reasonable belief that the Complainants had been, or would become, involved in activities contravening the *Criminal Code*. These activities do not meet the definition of “investigation” because, when the Organization began collecting the Complainant’s personal information in the course of the online chats, it was not reasonable to believe any contravention may occur or may have occurred. The Organization did not already have a basis for thinking that either Complainant had lured, or would lure, a child, given that the Organization did not even know them.

[59] I turn to the Organization’s submission that, without the decoy that it arranges to communicate with its targets, it is likely that the targets would find an actual young person to lure, in contravention of the law. However, I find the Organization’s activities in relation to the Complainants do not constitute an investigation as defined in PIPA. Again, there must be a prior reason to investigate a particular individual or event.

[60] In another relevant case, former Commissioner Denham reviewed video surveillance that employers used in investigating possible misconduct by employees in the performance of their duties. She found that the employer could properly view the footage and commence an investigation “only if other

circumstances prompt it to investigate.”²⁵ The employer could not continuously and routinely monitor the surveillance to see if wrongdoing has occurred or may occur.

[61] Here, the Organization engaged in mass targeting of members of the public through its online advertisements in the hopes of uncovering conduct that the Organization believes to be in contravention of the *Criminal Code*. The Organization’s broad targeting, or fishing expedition, falls outside of the definition of “investigation” in PIPA.

[62] Further, despite its suggestions to the contrary, the Organization was not actually collecting, using or disclosing the Complainants’ personal information for any investigative purpose. I agree with the Complainants that the Organization’s true purpose was eventually to publicly name and shame them, as its dissemination of the videos and its request that others share them indicates. This belies any argument that, when it posted or responded to the Craigslist advertisements, or when it confronted and video-recorded the Complainants, the Organization was trying to investigate individuals who had lured or may lure a child.

[63] This Organization’s purpose for collecting, using and disclosing the Complainants’ personal information does not comply with ss. 12(1)(c), 15(1)(c) and 18(1)(c) of PIPA. I conclude that PIPA did not authorize the Organization to collect, use or disclose the Complainants’ personal information without their consent.²⁶

CONCLUSION

OIPC File No.: P16-68731 (Complainant 1)

[64] I find that the Organization’s collection, use and disclosure of Complainant 1’s personal information contravened PIPA. Under s. 52(3)(e), I require the Organization to stop collecting, using or disclosing any of Complainant 1’s personal information. Under s. 52(3)(f), I also require the Organization to destroy all of Complainant 1’s personal information at issue.

²⁵ Order P12-01, 2012 BCIPC 25 (CanLII) at para. 154.

²⁶ The Complainants submit that the Organization has also contravened ss. 11, 14 and 17 of PIPA by collecting, using and disclosing their personal information in a manner that a reasonable person would not consider appropriate in the circumstances. Conversely, the Organization submits that any reasonable person would rather have a creep’s likeness disclosed and privacy violated, than have that creep luring a child off the internet for an unknown purpose and without the informed consent of that child’s guardian. It is not necessary for me to consider the extent to which the organization acted reasonably, given my conclusion that the Organization had no authority, in the first place, to collect, use or disclose the Complainant’s personal information.

[65] Under s. 52(4), as terms of this Order, I specify that the Organization, with respect to all information in its custody or under its control:

- a) Destroy all records of the online communications that Complainant 1 had with the Organization's decoy, both on its members' electronic devices and in any hard copies;
- b) Destroy all copies of the video-recording of Complainant 1 on members of the Organization's electronic devices;
- c) Remove from the internet all copies of, and links to, the video-recording of Complainant 1 that were posted or shared by the Organization's members;
- d) Remove from the internet all copies of the complaint that Complainant 1 made to my office that were posted or shared by the Organization's members;
- e) Remove from the internet all commentary the Organization's members made about Complainant 1, arising from the video-recording, his online communications with the Organization, and his complaint to my office;
- f) Request, and ensure to the extent possible, that anyone encouraged to post or share Complainant 1's personal information removes it from the internet and destroys it (all copies of the video-recording, his online communications with the Organization, his complaint, and commentary about him);
- g) Request that the service provider operating the host site of any of the foregoing personal information of Complainant 1, whether Facebook, YouTube or any other service provider, remove the information from its site;
- h) Inform my office, on or before Wednesday, September 6, 2017, that actions A to G are complete.

OIPC File No.: P17-69536 (Complainant 2)

[66] I find that the Organization's collection, use and disclosure of Complainant 2's personal information contravened PIPA. Under s. 52(3)(e), I require the Organization to stop collecting, using or disclosing any of Complainant 2's personal information. Under s. 52(3)(f), I also require the Organization to destroy all of Complainant 2's personal information at issue.

[67] Under s. 52(4), as terms of this Order, I specify that the Organization with respect to all information in its custody or under its control:

- a) Destroy all records of the online communications that Complainant 2 had with the Organization's decoy, both on its members' electronic devices and in any hard copies;

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- b) Destroy all copies of the video-recording of Complainant 2 on members of the Organization's electronic devices;
 - c) Remove from the internet all copies of, and links to, the video-recording of Complainant 2 that were posted or shared by the Organization's members;
 - d) Remove from the internet all commentary the Organization's members made about Complainant 2, arising from the video-recording and his online communications with the Organization;
 - e) Request, and ensure to the extent possible, that anyone encouraged to post or share Complainant 2's personal information removes it from the internet and destroys it (all copies of the video-recording, his online communications with the Organization, and commentary about him);
 - f) Request that the service provider operating the host site of any of the foregoing personal information of Complainant 2, whether Facebook, YouTube or any other service provider, remove the information from its site;
 - g) Inform my office, on or before Wednesday, September 6, 2017, that actions A to F are complete.

July 24, 2017

ORIGINAL SIGNED BY

Drew McArthur
Acting Information and Privacy Commissioner
for British Columbia

OIPC File Nos.: P16-68731 and P17-69536