

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER P2018-04

September 10, 2018

PRIMARIS MANAGEMENT INC.

Case File Number 002097

Office URL: www.oipc.ab.ca

Summary: The Applicant was employed by a tenant in the Organization's shopping mall. The Applicant was involved in an incident with an employee of the Organization, while performing his duties for his employer. The incident was captured on the Organization's video surveillance system. The Applicant requested a copy of the video. The Organization initially provided still photographs from the video, but refused to provide a copy of the video itself.

The Applicant requested a review of the Organization's response, and subsequently requested an inquiry, which the Commissioner granted.

The Adjudicator determined that the video cannot be withheld under section 24(2)(c) (information collected for an investigation or legal proceeding). While the Organization used the video in the course of an investigation, the video was not *collected for* the purpose of that investigation.

The Adjudicator determined that the video contains personal information of third parties, which must be withheld. The Adjudicator accepted the Organization's arguments that in this case, it was not reasonable to require the Organization to sever the third party information from the video and provide the Applicant with access to the remainder.

Statutes Cited: AB: *Personal Information Protection Act*, S.A. 2003, c. P-6.5, ss. 1, 24, 52.

Authorities Cited: AB: Orders P2014-04, P2016-02.

I. BACKGROUND

[para 1] The Applicant was employed by a tenant in the Organization's shopping mall. The Applicant was involved in an incident with an employee of the Organization, while performing his duties for his employer. The incident was captured on the Organization's video surveillance system. The Applicant requested a copy of the video. The Organization initially provided still photographs from the video, but refused to provide a copy of the video itself.

[para 2] The Applicant requested a review of the Organization's response. The Complainant subsequently requested an inquiry, which the Commissioner granted.

II. RECORDS/INFORMATION AT ISSUE:

[para 3] The information at issue consists of a 23-second video clip from the Organization's video surveillance tapes.

III. ISSUES

[para 4] The Notice of Inquiry, dated January 8, 2018, states the issues for inquiry as the following:

1. Did the Organization refuse to provide access to the Applicant's personal information in its custody or control?
2. If the Organization refused to provide access to the Applicant's personal information in its custody or control, did it do so in accordance with section 24(2) (discretionary grounds for refusal) or with section 24(3) (mandatory grounds for refusal)? In particular,
 - a. Did the Organization properly apply section 24(2)(c) (information collected for an investigation or legal proceeding) to any of the withheld information?
 - b. Does section 24(3)(b) (information revealing personal information about another individual) apply to any of the requested information?
3. If the withheld records contain or consist of personal information of the Applicant, and if section 24(3)(b) applies to this information, is the Organization reasonably able to sever the information to which this section applies, and provide the personal information of the Applicant, as required by section 24(4)?

IV. DISCUSSION OF ISSUES

1. **Did the Organization refuse to provide access to the Applicant's personal information in its custody or control?**

[para 5] The video consists of a short clip from a surveillance camera aimed down a wing of the Organization's premises (a mall); it also captures a portion of the Guest Services desk. The Applicant can be seen on the video, along with other members of the public. The Organization acknowledges that this video is in its custody and control. The Organization provided the Applicant with still pictures from the video but refused access to the video. The answer to this first question is 'yes'.

2. If the Organization refused to provide access to the Applicant's personal information in its custody or control, did it do so in accordance with section 24(2) (discretionary grounds for refusal) or with section 24(3) (mandatory grounds for refusal)?

a. Did the Organization properly apply section 24(2)(c) (information collected for an investigation or legal proceeding) to any of the withheld information?

[para 6] The Organization cited section 24(2)(c) for refusing to provide a copy of the video to the Applicant. That provision states:

24(2) An organization may refuse to provide access to personal information under subsection (1) if

...

(c) the information was collected for an investigation or legal proceeding;

...

[para 7] The Organization argues that the video was used to investigate a report made by an employee of the Organization about the Applicant's conduct. I understand the Organization's argument to be that because the video was used as part of an investigation, it meets the criteria for section 24(2)(c).

[para 8] In Order P2016-02, the adjudicator discussed the use of overt video surveillance on the premises of a condominium. She was specifically discussing whether the collection of video surveillance in that context could be characterized as information collected as part of an investigation under section 14 of the Act (circumstances where consent is not required to collect personal information). She concluded that (at para. 12):

... section 14(d) does authorize collection without consent when information is collected for the purpose of an investigation or for legal proceedings. However, it cannot be said the personal information of individuals collected through surveillance when no incidents are taking place, or are reasonably likely to take place, is collected for the purpose of an investigation or a legal proceeding.

[para 9] She concluded this while acknowledging that video surveillance is ubiquitous and that it can be reasonably understood that when a condominium collects personal information through surveillance, the purpose is to maintain security and the value of the building (against vandalism) and to deter criminal acts.

[para 10] In order to meet the definition of “investigation” in section 1(1)(f) of the Act into a breach of an agreement, contravention of a law, or other circumstances that may result in a remedy at law, the conduct in question must have occurred or be likely to occur. The adjudicator’s conclusion in Order P2016-02 is that when video surveillance is continuous and captures all activities, an investigation into a particular incident is not sufficiently likely; it is merely possible. “Merely possible” is not sufficient to authorize a collection without consent for the purpose of an investigation. I agree with this analysis (noting that surveillance targeted at a particular time, person, or place because a breach, contravention or similar conduct is reasonably likely to occur, may be interpreted differently).

[para 11] Section 14(d) is not at issue in this inquiry; however, section 24(2)(c) is, and this provision applies only to information collected for the purpose of an investigation or legal proceeding. As the video surveillance was captured as part of the Organization’s continual (i.e. not targeted) surveillance system, I find that the video was not *collected* for an investigation, as that term is defined in the Act. That the video was used in an investigation is not sufficient to meet the terms of this provision; any information collected by an organization might later be used in an unrelated investigation. This exception to access applies only where the information was collected for that investigation.

[para 12] I find that section 24(2)(c) does not apply to the information in the video.

b. Does section 24(3)(b) (information revealing personal information about another individual) apply to any of the requested information?

[para 13] This provision requires the Organization to refuse access to information about third party individuals. It states:

24(3) An organization shall not provide access to personal information under subsection (1) if

...

(b) the information would reveal personal information about another individual;

...

[para 14] The Organization argues that the video contains personal information of third parties. I have reviewed the video; it is clear that other members of the public (patrons of the mall) are visible on the video. While the quality of the video is grainy, these individuals could be identifiable by people who know them. I find that section 24(3)(b) applies to this information in the video.

[para 15] Section 24(3)(b) is a mandatory provision; if it applies, there is no ability for the Organization to exercise discretion to provide that information to the Applicant.

3. If the withheld records contain or consist of personal information of the Applicant, and if section 24(3)(b) applies to this information, is the Organization reasonably

able to sever the information to which this section applies, and provide the personal information of the Applicant, as required by section 24(4)?

[para 16] I found that the video contains third party personal information. However, section 24(4) states that if the third party personal information can reasonable be severed from the video, the Organization must provide access to the remainder:

24(4) If an organization is reasonable able to sever the information referred to in subsection (2)(b) or (3)(a), (b) or (c) from a copy of the record that contains personal information about the applicant, the organization must provide the applicant with access to the part of the record containing the personal information after the information referred to in subsection (2)(b) or (3)(a), (b) or (c) has been severed.

[para 17] The Organization argues that it is not reasonable to require it to sever the third party personal information from the video. It states (initial submission, at para. 22):

[The Organization] evaluated methods for rendering the video of others aside from the Applicant non-identifiable. [The Organization] had no internal methods, such as software, for severing the personal information of others in the video. In order to have the video rendered non-identifiable, [The Organization] would have had to acquire new technology and train its staff on same or engage a third party service provider and incur significant costs. Doing so would have been unreasonable in the circumstances.

[para 18] The Organization cites Order P2014-04 as support for its argument. In that Order, an applicant had requested recordings of telephone conversations between employees of an organization and the applicant's former spouse. The conversations included the applicant's own personal information, as well as that of his former spouse (specifically, her voice). The adjudicator considered whether the voice of the ex-spouse could be severed from the recordings such that they could be provided to the applicant without disclosing her personal information (her voice). The adjudicator found (at para. 21):

I considered whether the voice of the ex-wife can be "removed" in the sense of being disguised, but I find that this would not be reasonable in terms of severing, which is a requirement in order to trigger section 24(4). Section 2 of PIPA states that the standard to be applied in determining whether something can be dealt with reasonably is what a reasonable person would consider appropriate in the circumstances. In my view, a reasonable person would not consider it appropriate for an organization to acquire and use some form of technology so as to be able to disguise voices on audio recordings.

[para 19] I agree with this analysis. In this case, the Organization would have to obtain technology it does not currently have in order to remove, pixilate, or otherwise render non-identifiable the personal information of the third parties. This would need to be done frame-by-frame to ensure that the Applicant's movements, which cross the field of the camera's view, remain visible. To require this is not reasonable in this case, given the particular facts discussed above.

[para 20] I conclude that section 24(4) does not apply so as to require the Organization to sever the personal information of third parties in the video in order to provide the Applicant with a copy of the video.

IV. ORDER

[para 21] I make this Order under section 52 of the Act.

[para 22] I find that section 24(2)(c) does not apply to the information in the video.

[para 23] I find that section 24(3)(b) applies to the third party personal information in the video and it is not reasonable to require the Organization to sever this information.

Amanda Swanek
Adjudicator