ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER P2019-04

July 8, 2019

NAL RESOURCES MANAGEMENT LTD

Case File Numbers 001533, 001535, 001567, and 001597

Office URL: www.oipc.ab.ca

Summary: The Complainants made complaints to the Commissioner that NAL Resources Management Ltd (the Organization) had instituted a policy of requiring contractors, such as the Complainants, to have a GPS tracking device installed on their vehicles. The default setting of the tracking device would be "on", but a vehicle operator could turn it off when not performing services for the Organization. The Organization would be responsible for the costs of installing and removing the GPS tracking device. The purpose of installing the tracking device was to "promote good driving behavior" and to assist the Organization to locate the contractor in the event of a "Safety Line call out". The Complainants asserted that this policy contravenes the *Personal Information Protection Act* (PIPA).

The Adjudicator found that the information collected by the GPS tracking device was "personal employee information" within the terms of PIPA, as the Organization collected and used it for the purpose of managing the employment relationship.

The Adjudicator found that the Organization had not been shown to have failed to meet its duties under PIPA.

Statutes Cited: AB: *Personal Information Protection Act,* S.A. 2003, c. P-6.5, ss. 1, 5, 6, 7, 11, 14, 15, 16, 17, 18, 19, 20, 21, 34, 49, 52

Authorities Cited: AB: Orders P2010-001, P2018-06

Cases Cited: *Edmonton (City) v Alberta (Information and Privacy Commissioner)*, 2016 ABCA 110 (CanLII)

I. BACKGROUND

[para 1] The Complainants made complaints to the Commissioner that NAL Resources Management Ltd (the Organization) had instituted a policy of requiring contractors, such as the Complainants, to have a GPS tracking device installed on their vehicles. The default setting of the tracking device would be "on", but a vehicle operator could turn it off when not performing services for the Organization. The Organization would be responsible for the costs of installing and removing the tracking device. The purpose of installing the tracking device was to "promote good driving behavior" and to assist the Organization to locate the contractor in the event of a "Safety Line call out". The Complainants asserted that this policy contravenes the *Personal Information Protection Act* (PIPA).

[para 2] The Commissioner appointed a senior information and privacy manager to investigate and attempt to mediate the complaint pursuant to section 49 of PIPA. At the conclusion of this process, the Complainants requested an inquiry.

III. ISSUES

Issue A: Would the collection, use and/or disclosure of the Complainants' information by way of the GPS device involve collection, use and/or disclosure of their "personal information" as that term is defined in section 1(1)(k) of PIPA?

If the answer to question 1 is 'yes', the Commissioner will also decide the following issues:

Issue B: Would the collection, use and/or disclosure of the Complainants' personal information by way of the GPS device be contrary to, or in compliance with, section 7(1) of PIPA (no collection, use or disclosure without either authorization or consent)? In particular, would the Organization have the authority to collect, use and/or disclose the personal information without consent, as permitted by sections 14, 17 or 20 of PIPA?

Issue C: Would the collection, use and/or disclosure of the Complainants' personal information by way of the GPS device be contrary to, or in accordance with, sections 11(1), 16(1) and 19(1) of PIPA (collection, use and/or disclosure for purposes that are reasonable)?

Issue D: Would the collection, use and/or disclosure of the Complainants' personal information by way of the GPS device be contrary to, or in accordance with, sections 11(2), 16(2) and 19(2) of PIPA (collection, use and/or disclosure to the extent reasonable for meeting the purposes)?

Issue E: Would the collection, use and/or disclosure of the Complainants' information by way of the GPS device involve collection, use and/or disclosure of their "personal employee information" as that term is defined in section 1(1)(j) of PIPA?

Issue F: Would the collection, use and/or disclosure of the Complainants' personal employee information by way of the GPS device be contrary to, or in compliance with, section 7(1) of PIPA (no collection, use or disclosure without either authorization or consent)? In particular, would the Organization have the authority to collect, use and/or disclose the personal employee information without consent, as permitted by sections 15, 18 or 21 of PIPA?

Issue G: Did the Organization comply with section 5(3) (designate one or more individuals responsible for ensuring compliance with PIPA)?

Issue H: Did the Organization comply with section 6(2)(a) (develop and follow policies and practices) and 6(2)(b) (provide information about policies and practices)?

Issue I: Did the Organization comply with section 34 of the Act (reasonable security arrangements for personal information in its custody or control)?

IV. DISCUSSION OF ISSUES

[para 3] For the reasons that follow, I have decided that Issues E and F are determinative of Issues A through F. My analysis will therefore focus on these two issues.

Issue E: Would the collection, use and/or disclosure of the Complainants' information by way of the GPS device involve collection, use and/or disclosure of their "personal employee information" as that term is defined in section 1(1)(j) of PIPA?

Issue F: Would the collection, use and/or disclosure of the Complainants' personal employee information by way of the GPS device be contrary to, or in compliance with, section 7(1) of PIPA (no collection, use or disclosure without either authorization or consent)? In particular, would the Organization have the authority to collect, use and/or disclose the personal employee information without consent, as permitted by sections 15, 18 or 21 of PIPA?

[para 4] PIPA governs the collection, use, and disclosure of personal information by organizations.

[para 5] Section 1(1)(k) of PIPA defines personal information for the purposes of PIPA. It states:

1(1) In this Act,

> *(k) "personal information" means information about an identifiable individual […]*

[para 6] PIPA creates a class of personal information called "personal employee information" which is subject to different rules than is "personal information". Section 1(1)(j) defines "personal employee information". It states:

1(1) In this Act,

> *(j) "personal employee information" means, in respect of an individual who is a potential, current or former employee of an organization, personal information reasonably required by the organization for the purposes of*
>
> > *(i) establishing, managing or terminating an employment or volunteer-work relationship, or*
> >
> > *(ii) managing a post-employment or post-volunteer-work relationship*
>
> *between the organization and the individual, but does not include personal information about the individual that is unrelated to that relationship […]*

[para 7] Section 1(1)(e) defines the term "employee" where that term is used in PIPA. It states:

1(1) In this Act,

> *(e) "employee" means an individual employed by an organization and includes an individual who performs a service for or in relation to or in connection with an organization*
>
> > *(i) as a partner or a director, officer or other office-holder of the organization,*
> >
> > *(i.1) as an apprentice, volunteer, participant or student, or*
> >
> > *(ii) under a contract or an agency relationship with the organization […]*

[para 8] Section 1(1)(e) of PIPA establishes that the term "employee", where it appears in PIPA, does not refer to an employee at common law. Rather, the term

"employee" includes a partner or director, office-holder, apprentice, volunteer, participant, student, contractor or agent of an organization, all of which are entities that would not be considered "employees" at common law. As a consequence, information about a contractor reasonably required by an organization to manage a contractual relationship with a contractor will be "personal employee information" under PIPA, even though the organization and the contractor do not have an employment relationship at common law.

[para 9] Section 7(1) of PIPA requires an organization to obtain the consent of an individual prior to collecting, using, or disclosing the individual's personal information, unless another provision of PIPA authorizes collection, use, or disclosure without consent. It states:

> *7(1) Except where this Act provides otherwise, an organization shall not, with respect to personal information about an individual,*
>
> > *(a) collect that information unless the individual consents to the collection of that information,*
> >
> > *(b) collect that information from a source other than the individual unless the individual consents to the collection of that information from the other source,*
> >
> > *(c) use that information unless the individual consents to the use of that information, or*
> >
> > *(d) disclose that information unless the individual consents to the disclosure of that information.*

[para 10] Section 15 of PIPA, which establishes the circumstances in which an organization may collect "personal employee information", does not require the consent of the individual before an organization may collect such information. As a result, it is an example of a provision where the "Act provides otherwise" within the terms of section 7(1). Section 15 states:

> *15(1) An organization may collect personal employee information about an individual without the consent of the individual if*
>
> > *(a) the information is collected solely for the purposes of*
> >
> > > *(i) establishing, managing or terminating an employment or volunteer-work relationship, or*
> > >
> > > *(ii) managing a post-employment or post-volunteer-work relationship,*

between the organization and the individual,

(b) it is reasonable to collect the information for the particular purpose for which it is being collected, and

(c) in the case of an individual who is a current employee of the organization, the organization has, before collecting the information, provided the individual with reasonable notification that personal employee information about the individual is going to be collected and of the purposes for which the information is going to be collected.

(2) Nothing in this section is to be construed so as to restrict or otherwise affect an organization's ability to collect personal information under section 14.

[para 11] Section 18 authorizes use of personal employee information without consent. It states:

18(1) An organization may use personal employee information about an individual without the consent of the individual if

(a) the information is used solely for the purposes of

(i) establishing, managing or terminating an employment or volunteer-work relationship, or

(ii) managing a post-employment or post-volunteer-work relationship,

between the organization and the individual,

b) it is reasonable to use the information for the particular purpose for which it is being used, and

(c) in the case of an individual who is a current employee of the organization, the organization has, before using the information, provided the individual with reasonable notification that personal employee information about the individual is going to be used and of the purposes for which the information is going to be used.

(2) Nothing in this section is to be construed so as to restrict or otherwise affect an organization's ability to use personal information under section 17.

[para 12] Sections 15 and 18 permit an organization to collect or use personal employee information for the sole purpose of managing an employment relationship, provided that it is reasonable to collect or use the personal employee information for the

particular purpose, and reasonable notification of the Organization's intention has been provided.

[para 13] If the information that is the subject of this complaint is personal employee information, and the Organization's collection and use of the information conforms to the requirements of sections 15 and 18 of PIPA, the Complainants' consent would not be required to collect and use the information.

[para 14] The Organization argues:

> NAL engaged the Complainants through four different corporations (the "Corporations") rather than as individual contractors. The Corporations and NAL entered into separate Consulting Service Provider Contract Well / Facilities Services Agreements (the "Corporate Agreements"), under which the Corporations were required to service NAL's assets in remote areas. The Corporate Agreements required the Corporations to provide personnel, equipment and vehicles to fulfill their obligations to NAL. Given the remote, working alone nature of the engagement with the Corporations, NAL mandated the installation of GeoTrac.
>
> […]
>
> Would the collections, use and / or disclosure of the Complainants' information by way of the GPS device involve collection, use, and / or disclosure of their "personal information" as that term is defined under section 1(1)(k) of PIPA?
>
> No. There was no "personal information" collected, used and / or disclosed by way of the GeoTrac device. The Complainants were acting as organizations in their dealings with NAL. Information about organizations is not "personal information" under PIPA. Moreover, the information collected, used and/or disclosed by way of the GeoTrac device is about a vehicle, rather than a specific individual […]

[para 15] The Complainants argue:

> If the data is able to be connected to an individual enough to satisfy the requirements of OHS […] (OHS regulations govern the safety of a worker, not a vehicle) then it is specific enough to be "personal employee information". If the GeoTrac data does not identify an individual then it would not be useful in satisfying OHS regulations. These units are not transferrable so the data is related to one individual and is thus personal information.

[para 16] The affidavit submitted by the Organization explains the kinds of information the GPS tracker is intended to collect, and its purposes for collecting this data:

> As a matter of practice, to ensure compliance with the Working Alone Policy, NAL requires all contractors to install a geolocation device in order to establish and maintain a line of communication. NAL has specifically required the installation of a GeoTrac system […]
>
> The GeoTrac system tracks a vehicle location and use through GPS and cellular technology. GeoTrac is designed by GeoTrac Systems Inc. […] a third party service provider, to help companies better manage driver and lone worker safety, compliance and general fleet efficiency. The information collected by the system includes average and maximum speed, direction, acceleration rates, braking distances and speeds, "rough road" driving, and the geolocation of the vehicle by GPS and / or cellular network […]

> The GeoTrac system collects information through a physical device installed in a vehicle. When the vehicle is turned on, the device collects the Telemetry Data and allows NAL to locate vehicle within a factor of metres.
>
> […]
>
> In implementing GeoTrac, NAL was attuned to its privacy obligations and configured the system in a privacy sensitive manner while still maintaining essential work alone coverage. Specifically, when the GeoTrac system was initially installed in NAL's contractor vehicles, it included a manual "on" switch that had to be activated before any location information was transmitted to the GeoTrac platform.
>
> NAL discovered after the installation of the GeoTrac system that contractors often failed to engage GeoTrac's "on" switch required for NAL to establish a line of communication and work alone coverage.. As a result, NAL's contractors would often work alone in remote areas without the protection of any safety system coverage, whatsoever. NAL's personnel would not "check-in" with NAL's central office, and no alerts would be issued to NAL where a scheduled "check-in" was missed because GeoTrac was not active.
>
> This represented an unacceptable risk to the safety of NAL's contractors, and an increased risk of physical injury or fatality to personnel. Accordingly, NAL made modifications to the GeoTrac system installed in contractor vehicles so that, when the vehicle ignition was engaged, the GeoTrac device installed in vehicles would automatically turn "on".
>
> Again, recognizing the need to be respectful of privacy, NAL installed a manual "off" switch, allowing GeoTrac to be turned off after the ignition was engaged. This prevented the known and significant problem of personnel forgetting to turn "on" the GeoTrac device before working alone. It also provided an opt-out mechanism allowing contractors to turn the system off for after-hours, personal use of vehicles. For clarity, when the device is off, it will not collect or transmit any Telemetry Data […]
>
> This configuration could result in an instantaneous recording of the Corporations' vehicles' geolocation outside of working hours for NAL (the "Incidental Data"). This would generally consist only of the geolocation of the vehicle, transmitted between the moment that the vehicle ignition is engaged, and before the GeoTrac device is switched "off".

[para 17] In its submissions, the Organization's primary argument is that the Complainants are contractors and corporations, and that as such, none of the information that would be collected should they have had the GPS tracker installed on their vehicles would be personal information, but information about them acting as representatives of organizations.

[para 18] Past orders of this office have held that information about the representative of an organization will be personal information if it has a personal dimension, such as when the information is about the representative acting as an individual citizen or has personal consequences for the representative in that capacity. In *Edmonton (City) v Alberta (Information and Privacy Commissioner)*, 2016 ABCA 110 (CanLII), the Alberta Court of Appeal considered this approach, under both the FOIP Act, and PIPA, to be reasonable. The court said:

> In general terms, there is some universality to the conclusion in *Leon's Furniture* that personal information has to be essentially "about a person", and not "about an object", even though most

> objects or properties have some relationship with persons. As the adjudicator recognized, this concept underlies the definitions in both the *FOIPP Act* and the *Personal Information Protection Act.* It was, however, reasonable for the adjudicator to observe that the line between the two is imprecise. Where the information related to property, but also had a "personal dimension", it might sometimes properly be characterized as "personal information". In this case, the essence of the request was for complaints and opinions expressed about Ms. McCloskey. The adjudicator's conclusion (at paras. 49-51) that this type of request was "personal", relating directly as it did to the conduct of the citizen, was one that was available on the facts and the law.

[para 19] Applying this principle to the complaint, the data that would be collected by the GPS tracker is not merely information about a vehicle and its location, but about the individual operating the vehicle. I draw support for this finding from the purpose of the Organization's collection: to promote personal safety. The Organization's collection of vehicle data is meant to promote the safety of citizens, to characterize the Organization's purposes in the terms used by the Alberta Court of Appeal. Given that the data that would be collected would enable the Organization to determine the physical location of the contractor, as an individual, which could be expected to have personal consequences for the contractors as individuals -- as the Complainants argue -- I conclude that the data that would be collected has a personal dimension.

[para 20] Having found that the information that would be collected is personal information, I turn now to the question of whether the personal information is personal employee information.

[para 21] As noted above, the term "employee", where it is used in PIPA, includes contractors, such as the Complainants in this case. As a result, the fact that the information collected is about contractors, does not preclude it from being "personal employee information". As noted above, section 1(1)(j) defines "personal employee information" as information in respect of an individual that is reasonably required by the organization for the purposes of managing an employment relationship.

[para 22] In Order P2018-06, I considered the reference to "employment relationship" in PIPA with regard to individuals who are deemed to be employees under PIPA, but who are not employees at common law. I said:

> Section 1(1)(e) of PIPA establishes that the Legislature does not use the term "employee" to refer to an employee at common law. Rather, the term "employee" includes a partner or director, office-holder, apprentice, volunteer, participant, student, contractor or agent of an organization, all of which are entities that would not normally be considered "employees" at common law.
>
> I turn now to the question of whether section 21(2) authorizes the disclosure to CHF in this case.
>
> The Complainant was a director of the Organization and this role would make her an "employee" of the Organization within the terms of PIPA. Further, the information that was disclosed to the CHF was information gathered by the Organization as part of the process of managing and terminating the Complainant's role as director. As a result, the information that was disclosed was "personal employee information" within the terms of section 1(1)(j).

> Section 21(2) authorizes an organization to disclose personal information to a potential or current employer without consent, provided that the personal information was originally collected as personal employee information.
>
> PIPA does not define the terms "employer" or "employment", as it does "employee". As a result, an argument could be made that these terms maintain their common law definitions. However, to deem someone such as a director, student, or volunteer, an "employee," must necessarily result in deeming the relationship between the director, student, or volunteer to be an employment relationship and the organization to be an employer. There would be no purpose in deeming an entity that is not an employee to be an employee if the relationship between the entity and the organization is not also deemed to be an employment relationship. This is because it is the nature of the relationship between an entity and an organization that determines whether the entity is an employee or not. This point was made by the Supreme Court of Canada in *671122 Ontario Ltd. v. Sagaz Industries Canada Inc.,* 2001 SCC 59 (CanLII), [2001] 2 SCR 983, where the Court said:
>
> > In my opinion, there is no one conclusive test which can be universally applied to determine whether a person is an employee or an independent contractor. Lord Denning stated in *Stevenson Jordan*, *supra*, that it may be impossible to give a precise definition of the distinction (p. 111) and, similarly, Fleming observed that "no single test seems to yield an invariably clear and acceptable answer to the many variables of ever changing employment relations . . ." (p. 416). Further, I agree with MacGuigan J.A. in *Wiebe Door*, at p. 563, citing Atiyah, *supra*, at p. 38, that what must always occur is a search for the total relationship of the parties [my emphasis]:
> >
> > [I]t is exceedingly doubtful whether the search for a formula in the nature of a single test for identifying a contract of service any longer serves a useful purpose.... The most that can profitably be done is to examine all the possible factors which have been referred to in these cases as bearing on the nature of the relationship between the parties concerned. Clearly not all of these factors will be relevant in all cases, or have the same weight in all cases. Equally clearly no magic formula can be propounded for determining which factors should, in any given case, be treated as the determining ones.
>
> If a determination that an individual is an employee is to be made by analyzing the relationship between the employee and an organization, then deeming an individual who is not an employee to be one, must necessarily result in the relationship between the individual and the organization being deemed to be an employment relationship. Moreover, if an individual is deemed to be an employee, then the organization for which the individual acts or provides services must necessarily be deemed to be an employer.

[para 23] For the reasons I expressed in Order P2018-06, I find that information in respect of the relationship between an organization and a contractor is to be viewed as information in respect of an employment relationship for the purposes of PIPA.

[para 24] With regard to the additional requirement in section 1(1)(j) that the information be reasonably required to manage the employment relationship, the Organization argues:

> Whether personal information is "reasonably required" to establish, manage or terminate an employment relationship is a context and fact specific determination that must take into account the nature of the employment relationship between the individual and the employer.

> Under PIPA, NAL may collect "employee personal information" that accounts for the nature of the employment relationships that it wishes to establish, manage, or terminate. NAL seeks only to establish or maintain employment relationships of a particular kind, i.e., those that entitle NAL to impose reasonable safety requirements […]
>
> The purpose at issue in the Inquiries is the use of GeoTrac to minimize the real risks of physical harm inherent to working alone around upstream oil and gas assets in remote areas.
>
> Without the Telemetry Data, it would be practically impossible for NAL to safely manage the Complainants' employment relationship, because they would not have guaranteed working alone coverage.

[para 25] I find, based on the evidence of the parties, and their submissions, that the Organization decided to install the GPS device in the Complainants' vehicles in order to collect and use information for the purpose of meeting occupational health and safety requirements with respect to the Complainants. Meeting occupational health and safety requirements is a function of managing the employment relationship (within the terms of PIPA).

[para 26] I also find that the information that would be collected once a contractor has finished his or her shift but before the GPS device has been shut off would be collected for the same purpose as information collected during the contractor's shift. The incidental collection of data in the time it takes an operator to shut off the device is a necessary result of the Organization's decision to default the device to "on" in order to meet its duties under occupational health and safety legislation. As a result, this information, too, is personal employee information. Although the data collected at that point is not necessary, in and of itself, to manage the employment relationship, in the circumstances, it is reasonable to, incidentally, collect it in order to manage the relationship.

[para 27] Having found that the information that would be collected by the GPS device is "personal employee information" I turn now to the question of whether sections 15 and 18 of PIPA authorize collection and use of data collected through the GPS device.

[para 28] As discussed above, an organization may collect and use personal employee information for the sole purpose of managing the employment relationship, without consent, provided it is reasonable to collect, use, or disclose the information for that purpose, and notice has been provided.

[para 29] The Complainants state:

> If the interpretation of section [1(1)(j)] of PIPA in this circumstance is that locating a worker in case of emergency is managing an employment relationship, then yes this GPS data could be interpreted as "personal employee information".
>
> […]
>
> If the information was only used for the purpose of locating workers in an emergency then it could be used without consent.

[para 30] The Organization states:

> Under PIPA, NAL may collect "employee personal information" that accounts for the nature of the employment relationships that it wishes to establish, manage, or terminate. NAL seeks only to establish or maintain employment relationships of a particular kind, i.e., those that entitle NAL to impose reasonable safety requirements […]
>
> […]
>
> The purpose at issue in the Inquiries is the use of GeoTrac to minimize the real risks of physical harm inherent to working alone around upstream oil and gas assets in remote areas.
>
> Without the Telemetry Data, it would be practically impossible for NAL to safely manage the Complainants' employment relationship, because they would not have guaranteed working alone coverage.
>
> The instantaneous and *de minimis* Incidental Data is a by-product of the modification made to the GeoTrac device to ensure that the Telemetry Data, and working alone coverage, is always provided. Without the Incidental Data, there is no guarantee of working alone coverage for the Complainants. For that reason, the Incidental Data is also personal information required by NAL in order to safely manage the Complainants' employment relationship.
>
> This requirement is reasonable. The Incidental Data is an instantaneous and *de minimis c*ollection of GPS location information, secured within the GeoTrac system, and used primarily for the purpose of ensuring continuous working coverage. Balanced against NAL's compelling safety objectives, the Incidental Data is reasonably required for the purpose of managing the Complainants' employment relationship.
>
> The Complainants assert in their initial submission that NAL has no reasonable requirement to collect Telemetry Data from the Corporations' vehicles while they are on public road, or travelling between NAL worksites. NAL's commitment to safety, and its legal obligations to maintain safe working conditions, are not confined to its property. OHS Legislation broadly defines the "worksite" to include vehicles operated on public roads, and compels NAL to ensure safety for such worksites:
>
> > "work site" means a location where a worker is, or is likely to be, engaged in any occupation and includes any vehicle or mobile equipment used by a worker in an occupation.
>
> NAL also carries the risk of (vicarious) liability in the event that its employees or contractors are involved in accidents when driving between worksites.
>
> NAL does not seek to use the Telemetry Data to independently evaluate safe driving practices, or to verify working hours. For the Complainants, GeoTrac's primary purpose is to manage employee safety.
>
> While the primary purpose of the implementation of GeoTrac was to ensure continuous working alone coverage, any ancillary purpose relating to safe driving monitoring, or monitoring contractor working hours, are recognized as being reasonable uses of employee personal information in both *Schindler* and *Thyssenkrupp*, above.
>
> The Incidental Data is unavoidably required in order ensure the effective operation of GeoTrac. Without the Incidental Data, the GeoTrac system cannot provide guaranteed working coverage, and so cannot function properly.

[para 31] I find that the Organization's purpose in collecting and using data obtained from the GPS tracker is to comply with its regulatory occupational health and safety obligations to its workers. I find that complying with occupational health and safety requirements is an example of managing an employment relationship. I also find that this collection and use is solely for this purpose and that it is reasonable to collect the data for this purpose. Finally, I find that the Organization provided notice to the Complainants regarding its intent to collect and use data with the GPS tracker and its purposes in doing so.

[para 32] I acknowledge that the Complainants take the position that the Organization could meet its stated objectives by setting the default of the GPS tracker to "off". However, I accept the Organization's explanation as to why setting the default to "off" created the risk that it could not meet its duties under occupational health and safety legislation if it did so.

[para 33] Section 11 of PIPA imposes the following restrictions on the collection of personal information.

> *11(1) An organization may collect personal information only for purposes that are reasonable.*
>
> *(2) Where an organization collects personal information, it may do so only to the extent that is reasonable for meeting the purposes for which the information is collected.*

[para 34] Section 16 of PIPA requires organizations to use personal information only for reasonable purposes and to use only the personal information that is necessary for meeting a reasonable purpose. It states:

> *16(1) An organization may use personal information only for purposes that are reasonable.*
>
> *(2) Where an organization uses personal information, it may do so only to the extent that is reasonable for meeting the purposes for which the information is used.*

[para 35] I have already found that the Organization's purpose in collecting and using the Complainants' personal information was for the purposes of ensuring compliance with legislation, which is a function of managing the employment relationship. I have already found that it was reasonable to collect and use personal employee information for this purpose. From the evidence before me, I conclude that the Organization collects and uses only the information reasonably necessary for meeting these purposes.

[para 36] As I have found that the Organization's collection and use of the Complainants' personal employee information was reasonable, and was solely for the

purpose of managing the employment relationship, it follows that I find that the collection and use complies with the requirements of sections 11 and 16.

Issue G: Did the Organization comply with section 5(3) (designate one or more individuals responsible for ensuring compliance with PIPA)?

[para 37] Section 5(3) of PIPA states:

> *5(3) An organization must designate one or more individuals to be responsible for ensuring that the organization complies with this Act.*

[para 38] The Complainants state:

> [An employee of the Organization] stated on the phone to [a complainant] on August 20, 2015 […] "Not many people know this, but I'm the privacy officer". She never contacted the other Complainants, and indicated she "didn't know much about PIPA or whatever".

[para 39] The Organization confirmed in its submissions that the employee of the Organization referenced in the Complainants' submissions, above, is its privacy officer.

[para 40] Given that the Organization has designated a privacy officer, I find that it has complied with the requirements of section 5(3).

Issue H: Did the Organization comply with section 6(2)(a) (develop and follow policies and practices) and 6(2)(b) (provide information about policies and practices)?

[para 41] Section 6 of PIPA states:

> *6(1) An organization must develop and follow policies and practices that are reasonable for the organization to meet its obligations under this Act.*
>
> *(2) If an organization uses a service provider outside Canada to collect, use, disclose or store personal information for or on behalf of the organization, the policies and practices referred to in subsection (1) must include information regarding*
>
> > *(a) the countries outside Canada in which the collection, use, disclosure or storage is occurring or may occur, and*
> >
> > *(b) the purposes for which the service provider outside Canada has been authorized to collect, use or disclose personal information for or on behalf of the organization.*
>
> *(3) An organization must make written information about the policies and practices referred to in subsections (1) and (2) available on request.*

[para 42] The Complainants state:

> On August 14, 2015 [the employee who communicated the requirement to install a GPS tracking device] communicated by email that a privacy policy for NAL's parent Company Manulife [Financial] had been uploaded to the company intranet (included in original complaint submission). That policy included a link to a contact at Manulife's privacy office to discuss concerns, since the PDF that had been uploaded to the intranet had been scanned the hyperlink did not work. [The employee] did not respond to a request for the contact info for that office and stopped communicating with the Complainants at that point.

[para 43] The Organization states:

> Yes. NAL had policies in place at the time that set out its personal information practices with respect to employee personal information. NAL also maintained a Working Alone Policy that provided that the preferred control measure for staff and contract positions is GPS monitoring linked to an automated call-out system. NAL has since enhanced its employee facing privacy policy, and has implemented an independent vehicle tracking notice, both of which are made available to employees and contractors.

[para 44] In Order P2010-001 I reviewed section 6 and said:

> In Order P2006-004, the Commissioner said:
>
> > The Law Society provides detailed evidence by way of an affidavit from its Information Officer and attached documents about the steps it has taken to meet its obligations under section 6 of the Act. This affidavit indicates that although the privacy policy was not formally approved until September, 2005, it has been in effect and followed by the LSA since January 1, 2004, the date the Act came into effect. I am satisfied that this policy is reasonable for the Law Society to meet its obligations under the Act. The CSA Model Policy has no bearing on this question.
> >
> > With regard to the Law Society's failure to provide to the A/C a copy of its policy regarding the handling of privacy complaints, the Law Society states that its privacy policy indicates that individuals who have concerns about how the Law Society has administered their personal information should contact the Law Society's Information Officer. It says the policy is no more specific than this because the steps that will be taken by the Information Officer will depend on the nature of the complaint. I accept this explanation.
>
> I take from this order that a policy need not be formally or "officially" approved, so long as it is reasonable and followed by an organization. Further, the duty to provide information about a policy or practice does not impose a requirement that information be written.
>
> "Policy", as that term is defined in the *Canadian Oxford Dictionary*, refers to "a course of action adopted or proposed by a government, party, business, or individual. "Practice" is defined as a "procedure generally" or as "an established method". Neither definition indicates that a policy or practice need be written.
>
> In my view, the duty to develop reasonable policies and practices in order to meet obligations under PIPA does not necessarily require formally setting these policies and practices down in writing. Moreover, section 6 does not require an organization to create a document entitled a "privacy policy" or to make such a document available on request, although this may be a desirable practice.

[para 45] Section 6 was subsequently amended by the addition of subsection (3) so that it now contains a requirement to provide written information about its policies and practices on request. There continues to be no requirement to create or maintain a formal written privacy policy; however, an organization must provide written information about its personal information policies and practices when requested.

[para 46] From the evidence before me, I find that the Organization provided written information about its privacy policies and practices once the Complainants requested it. I make this finding on the basis that it made the Manulife Privacy Policy available to the Complainants on the intranet when asked. I find that doing so met the requirements of section 6.

Issue I: Did the Organization comply with section 34 of the Act (reasonable security arrangements for personal information in its custody or control)?

[para 47] Section 34 states:

> *34 An organization must protect personal information that is in its custody or under its control by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure, copying, modification, disposal or destruction.*

Section 34 imposes a duty on an organization to protect personal information in its custody or under its control.

[para 48] The Complainants state:

> Around 70 field staff and management personnel had access to the GPS data. (This was later reduced to 17)
>
> GPS data was retained by NAL indefinitely without being anonymized.

[para 49] The affidavit of the Organization's privacy officer, states:

> The GeoTrac device transmits the Telemetry Data to a secure online platform, accessible only to individuals designated by NAL with a need to access that information to perform their job-related functions (the Designated Persons"). Logging into the online platform requires a company specific ID, a username, and a password.
>
> NAL also maintains a SharePoint process whereby access to GeoTrac is promptly terminated upon an individual's departure from the organization.
>
> After the Complainants expressed concern about the number of NAL personnel with access to GeoTrac vehicle data, NAL limited such access to a small group of approximately 17 Designated Persons with a need-to-know to satisfy workplace health and safety requirements.
>
> […]

> The Designated Persons were also instructed not to disclose the Telemetry Data (including the Incidental Data) access in the course of their duties to other persons at NAL.

[para 50] The Organization has explained the steps it has taken to secure the data it collects from the risk of unauthorized access and disclosure. There is no evidence before me that would enable me to find these measures to be inadequate.

V. ORDER

[para 51] I make this Order under section 52 of the Act.

[para 52] I confirm that the Organization is not in contravention of PIPA.

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Teresa Cunningham
Adjudicator