

# ALBERTA

## OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

### ORDER P2019-01

May 29, 2019

#### DE BEERS CANADA INC.

Case File Number 004192

**Office URL:** [www.oipc.ab.ca](http://www.oipc.ab.ca)

**Summary:** The Complainant made a complaint to the Commissioner that De Beers Canada Inc. (the Organization) had collected his passport information in contravention of Alberta's *Personal Information Protection Act* (PIPA).

The Adjudicator determined that the exchange of information that was the subject of the complaint had taken place in Ontario, between an organization based in Kingston, Ontario, that had contracted with the Complainant, and the Organization's Ontario office. The Adjudicator determined that the exchange of information could not be said to have taken place "within Alberta". As a result, PIPA did not apply to the complaint and the Adjudicator lacked jurisdiction to address it. The Adjudicator confirmed that the Organization had not contravened PIPA.

**Statutes Cited:** **AB:** *Personal Information Protection Act* S.A. 2003, c. P-6.5, s.1, 52  
**CA:** *Personal Information Protection and Electronic Documents Act* S.C. 2000, c. 5;  
Province of Alberta Exemption Order SOR/2004-219

#### I. BACKGROUND

[para 1] On October 13, 2016, the Complainant made a complaint to the Commissioner that De Beers Canada Inc. (the Organization) had collected his passport number in contravention of Alberta's *Personal Information Protection Act* (PIPA). He stated:

On September 9, 2016 I was hired by Memory Tree Video productions, in Kitchener Ontario, as a subcontractor, to provide television camera production services. The video shoot involved traveling from my home, in Toronto, to document what I was advised, was, a secret and classified process taking place at De Beers diamond exploration site in northern Saskatchewan. De Beers Canada had hired Memory Tree to produce a video of their special industrial process.

On September 9, 2016 I received an email from [an employee] of Memory Tree requesting my passport information [...]

[...]

I spoke with [the employee] and I questioned and challenged the need for such information given it was to be a domestic flight within Canada. I was told De Beers needs this information and it is necessary in order to book the flight for me.

So, in good faith, and relying on the representations provided by [the employee] I provided the requested information.

[para 2] The Commissioner authorized a senior information and privacy manager to investigate and attempt to mediate the complaint. At the conclusion of this process, the Complainant requested an inquiry.

[para 3] The Commissioner agreed to conduct an inquiry and delegated her authority to me.

## **II. ISSUES**

**Issue A: Is De Beers Canada Inc. an organization subject to PIPA?**

**Issue B: Does PIPA govern the collection of the information that is the subject of the complaint?**

## **III. DISCUSSION OF ISSUES**

**Issue A: Is De Beers Canada Inc. an organization subject to PIPA?**

[para 4] The Organization concedes that it has its head office in Calgary and that when it collects, uses, or disclosed personal information within Alberta, it must comply with PIPA.

**Issue B: Does PIPA govern the collection of the information that is the subject of the complaint?**

[para 5] Personal information is defined in section 1 of PIPA as “information about an identifiable individual”. In other words, if information enables someone to learn information about a particular individual, then it is personal information. A passport number is personal information as it is a means by which an individual may be identified.

[para 6] PIPA applies to the collection, use, and disclosure of personal information in Alberta by organizations. Because PIPA is provincial in application, it does not apply to the collection, use, or disclosure of personal information taking place outside Alberta.

[para 7] The *Personal Information Protection and Electronic Documents Act* S.C. 2000, c. 5 (PIPEDA) is a federal statute that applies to the collection, use, and disclosure of personal information in provinces whose legislatures have not passed private sector personal information protection statutes, such as Ontario.

[para 8] The Organizations in the Province of Alberta Exemption Order SOR/2004-219, which is an Order in Council made by the Governor General, establishes that organizations in Canada are subject to PIPEDA when they collect, use, or disclose personal information, unless they collect, use, or disclose personal information *within* Alberta. The Order states:

1 An organization, other than a federal work, undertaking or business, to which the *Personal Information Protection Act*, S.A. 2003, c. P-6.5, of the Province of Alberta, applies is exempt from the application of Part 1 of the *Personal Information Protection and Electronic Documents Act*, in respect of the collection, use and disclosure of personal information that occurs within the Province of Alberta.

[para 9] If personal information is collected, used, or disclosed *within* the Province of Alberta, PIPA applies (unless the collection, use, or disclosure is by a federal work, undertaking, or business). If the collection, use, or disclosure of personal information takes place outside Alberta, then PIPEDA applies. The Order does not extend Alberta's jurisdiction to the collection, use, or disclosure of personal information taking place outside Alberta, even in circumstances where the organization in question has a head office in Alberta.

[para 10] Under PIPA, I have jurisdiction to address complaints that personal information was collected within Alberta. However, I have no jurisdiction to address complaints regarding the collection of information other than personal information, and I have no jurisdiction to address complaints regarding information, including personal information, when the collection took place in Ontario.

[para 11] The Complainant provided copies of emails between himself and an employee of Memory Tree. These emails establish that an employee of Memory Tree requested the Complainant's passport information. The Complainant lived in Ontario and sent the email containing his passport information in Ontario. Memory Tree, which is located in Kitchener, Ontario, received the email in Ontario.

[para 12] The affidavit of the Exploration Programme Manager (the Manager) for the Organization establishes that the Toronto office of the Organization contracted with, and communicated with Memory Tree. The Manager, who is based in the Toronto office, confirmed that Memory Tree provided the passport information to her; however, she states that she deleted the information as the Organization had not requested it and did not require it.

[para 13] The Organization argues:

The Organization says that PIPA does not govern the collection of the information that is the subject of the Complaint, since there was no collection in Alberta. Memory Tree collected the personal information. Memory Tree is based in Ontario. The Complainant was based in Ontario. Any collection occurred in Ontario, under the jurisdiction of Office of the Privacy Commissioner of Canada (“OPC”), pursuant to PIPEDA.

While Memory Tree did collect the Complainant’s passport information and provided that personal information to the Organization, the Organization did not view the personal information and did not retain the personal information and therefore did not collect the personal information.

[para 14] The Complainant responded to the foregoing argument, stating:

R3.11 De Beers is mistaken – PIPA does govern the collection of passport information in this matter. Further, [the Manager] and others involved in this matter, were at all times employees of De Beers. That these employees were working from an office in another party of Canada has no bearing on the matter. Whether or not Federal and /or Ontario privacy legislation has a role to play, is separate and apart from the role of PIPA and the OIPC.

[para 15] From the arguments of the parties and the evidence before me, I conclude that the subject matter of the Complainant’s complaint – the provision of his passport information to employees of the Organization, did not take place within Alberta, but Ontario. While the Complainant argues that it is irrelevant that the employee who provided the passport information and the employee who received it were working in offices outside Alberta, it is this fact that determines the outcome of the inquiry. As the information exchange took place outside Alberta, it did not take place *within Alberta*. As a result, the complaint is not subject to PIPA, but PIPEDA, and I lack jurisdiction to address it.

[para 16] In issuing this order, I acknowledge that the Complainant requested the opportunity to provide additional affidavit evidence; however, I have decided that there would be no benefit to granting this request, given that additional affidavit evidence would not change the outcome of the inquiry. Moreover, I have given weight to the Complainant’s exhibits and submissions, where they are relevant to the issue for inquiry, and have relied on them in arriving at this decision. As a result, there is no need for affidavit evidence for that reason as well.

#### **IV. ORDER**

[para 17] I make this Order under section 52 of the Act.

[para 18] I have found that I lack jurisdiction to address the subject matter of the Complainant’s complaint, as the exchange of information that is the subject of the complaint did not take place within Alberta. I am only able to confirm that the

Organization has not failed to meet any of its duties under PIPA with regard to the Complainant's personal information.

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Teresa Cunningham  
Adjudicator