

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER P2021-09

September 14, 2021

LUMINOS CONSULTING & PRODUCTION INC.

Case File Number 006342

Office URL: www.oipc.ab.ca

Summary: The Complainants made a complaint to this Office that the Organization had posted personal information about them on its website, YouTube channel, and its Facebook page, without authority under the *Personal Information Protection Act* (PIPA). The Commissioner authorized a senior information and privacy manager to investigate and attempt to settle the matter. Subsequently, the Commissioner agreed to hold an inquiry.

The Adjudicator determined that the collection, use and disclosure of Complainant #1's personal information in a video that was posted online, was for journalistic purposes within the terms of section 4(3)(c). Therefore, the Adjudicator did not have jurisdiction to review that collection, use or disclosure.

The Adjudicator determined that the Organization did not have authority to collect, use or disclose either Complainant's personal information in the image of a text message or the accompanying comment of the Organization that it posted online.

Statutes Cited: **AB:** *Personal Information Protection Act*, S.A. 2003, c. P-6.5, ss. 1, 4, 8, 11, 14, 17, 20, 52, **Can:** *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c-5, ss. 4

Orders Cited: Order P2005-004

Cases Cited: *A.T. v. Globe24h.com*, 2017 FC 114 (CanLII), [2017] 4 FCR 310, (*Reference re Subsection 18.3(1) of the Federal Courts Act*, 2021 FC 723 (CanLII), *United Food and Commercial Workers, Local 401 v. Alberta (Attorney General)*, 2012 ABCA 130 (CanLII)

I. BACKGROUND

[para 1] The Complainants made a complaint to this Office that the Organization had posted their personal information about them on its website, YouTube channel, and its Facebook page, without authority under the *Personal Information Protection Act* (PIPA). Specifically, Complainant #1 complains that the Organization posted his personal information contained in video footage, and Complainant #2 complains that the Organization posted an image of a text message from her on its website; the text contained personal information of both Complainants. The Complainants complained that the Organization was harassing them via website posts and damaging their reputations and family restaurant business.

[para 2] The Complainants requested that the Commissioner investigate the complaint, and the matter has now proceeded to inquiry.

II. ISSUES

[para 3] The Notice of Inquiry, dated May 31, 2021, states the issues for inquiry as follows:

1. Did the Organization, collect, use, and / or disclose the Complainants' personal information as defined by section 1(1)(k) of PIPA?
2. If so, is the collection, use, and / or disclosure excluded from the Act by virtue of section 4(3)?
3. If the information is personal information, and section 4 does not apply to the collection, use, and / or disclosure, did the Organization collect, use and/or disclose the Complainant's personal information contrary to, or in compliance with, section 7(1) of PIPA (no collection, use or disclosure without either authorization or consent)? In particular,
 - b. Did the Organization have the authority to collect, use and/or disclose the information without consent, as permitted by sections 14, 17 or 20 of PIPA?
 - c. If the Organization did not have the authority to collect, use and/or disclose the information without consent, did the Organization obtain the Complainant's consent in accordance with section 8 of the Act before collecting, using or disclosing the information? In particular,
 - i. Did the individual consent in writing or orally? or
 - ii. Is the individual deemed to have consented by virtue of the conditions in section 8(2)(a) and (b) having been met? or
 - iii. Is the collection, use or disclosure permitted by virtue of the conditions in section 8(3)(a), (b) and (c) having been met?

4. If the Organization collected, used, and / or disclosed the Complainants' personal information, and the collection use, and / or disclosure is not subject to section 4 of PIPA, did the Organization collect, use or disclose the information contrary to, or in accordance with, sections 11, 16 and 19 (collection, use and/or disclosure for purposes that are reasonable and to the extent reasonable)?

[para 4] I will discuss these issues in a different order than that listed here.

III. DISCUSSION OF ISSUES

Did the Organization, collect, use, and / or disclose the Complainants' personal information as defined by section 1(1)(k) of PIPA?

[para 5] The submissions of the parties in this inquiry do not specifically address the issues set out in the Notice of Inquiry, and provide little in the way of factual background.

[para 6] The Organization appears to run Community TV, which is described on its website as "a local small business committed to telling the story of Medicine Hat, using videos"¹. One individual, F, appears to be primarily responsible for the Organization. F also posts local stories and interviews on Community TV, which has a website, YouTube channel, and Facebook page. In its submissions, the Organization takes responsibility for Community TV.

[para 7] The Organization also seems to have other ventures, such as creating websites for businesses. Those other ventures do not appear to relate to Community TV, except to the extent that the Organization refers to its videos on Community TV as examples of its work.

[para 8] Both Complainants and F appear to be acquainted due to a prior business relationship that does not appear to relate to the events in this case.

[para 9] The video footage referred to in the complaint relates to a story run by Community TV about a garbage issue in a local alleyway. In the video, F explains that he received a tip that a dumpster in a particular alleyway behind an apartment complex is often overflowing, and surrounded by drug paraphernalia. F decided to take video footage of the garbage and drug paraphernalia. While taking the footage, Complainant #1, who apparently worked for the company that owned the apartment complex, arrived and indicated that F should stop filming. There was a discussion between Complainant #1 and F. On the video, F identified Complainant #1 as "the person who owns [a named restaurant]."

[para 10] In the video, F also spoke to residents of the area, as well as a police officer who came to clean up the drug paraphernalia.

[para 11] The information of Complainant #1 in the video includes his image, and his employment history. This is his personal information.

¹ <https://www.comtv.ca/about>

[para 12] Complainant #1 was also named by F on the Community TV Facebook page, in a comment attached to an image of a text message that had been sent to the Organization by Complainant #2.

[para 13] Following the above incident, Complainant #2, who is the spouse of Complainant #1, sent a text to F; an image or screenshot of the text was posted on the Community TV Facebook page. In the comments related to the image of the text, F named Complainant #1 but not Complainant #2; he referred to Complainant #2 as Complainant #1's wife and referred to the restaurant owned by the Complainants. It is clear from other comments that viewers could discern the identity of Complainant #2 from the Facebook post. Therefore, Complainant #2's personal information was posted on social media as well.

[para 14] Given the above, I find that the Organization collected, used and disclosed the Complainants' personal information.

[para 15] To the extent that the complaints relate to the Organization naming and making comments about the Complainants' restaurant (e.g. F's opinion about the quality of the restaurant), that is not personal information.

If so, is the collection, use, and / or disclosure excluded from the Act by virtue of section 4(3)?

[para 16] Section 4(3) of the Act sets out circumstances in which the Act does not apply; section 4(3)(c) is relevant here. It states:

4(3) This Act does not apply to the following:

(c) the collection, use or disclosure of personal information, other than personal employee information that is collected, used or disclosed pursuant to section 15, 18 or 21, if the collection, use or disclosure, as the case may be, is for journalistic purposes and for no other purpose;

[para 17] The Organization has argued that F is a journalist, and indicates that the personal information was collected, used and disclosed for journalistic purposes. The Organization states that the text message "was sent to a business phone number of a journalist" and the content was considered newsworthy.

[para 18] The Organization also argued that "there is no reasonable expectation of privacy in public, especially when talking to a journalist who has a camera".

[para 19] The Complainants argue that the Organization is not engaged in journalism, because a journalist would not have posted videos of individuals without their consent, or posted a text message from an individual, and would have focused on facts rather than disparaging individuals and/or their business.

Applicable case law

[para 20] In Order P2005-004, former Commissioner Work considered the application of section 4(3)(c) to an article written in the Calgary Herald, that included personal information of the complainant. He said, at paras. 17-22:

Section 3 states that the two purposes of the Act are to recognize the need of organizations to collect, use or disclose personal information for purposes that are reasonable and the right of an individual to have his personal information protected. Part 2 of the Act establishes rules as to the collection, use and disclosure of personal information. Specifically, section 8 sets out the necessary requirements for an organization to demonstrate that it has obtained valid consent from an individual regarding the collection, use or disclosure of that individual's personal information. Section 8(2) deals with what constitutes deemed consent, while sections 14, 17 and 20 deal with the circumstances in which an organization may collect, use and disclose personal information without consent. When examining the enumerated circumstances in which an organization may collect, use or disclose personal information without consent, one finds it difficult to envisage most journalistic enterprises being able to meet the consent requirements. In these sections the legislative purpose is clearly the protection of personal information.

It is due to the protective nature of such sections that McNair and Scott in *Privacy Law in Canada* (Markham, Ontario: Butterworths Canada Ltd., 2001) have advanced the argument that the express exception for journalistic purposes were motivated by a concern that the requirements of private sector privacy legislation would unduly restrict the activities of journalists and writers and risk infringing the "freedom of expression, including the freedom of the press and other media of communications" that is guaranteed by section 2(b) of the *Canadian Charter of Rights and Freedoms*. With this background in mind I now turn to the meaning of "journalistic purposes".

Webster's New College Dictionary defines "journalistic" as "Of, relating to, or typical of journalists." "Journalism" is defined as:

1. Collection, writing, editing and dissemination of news through the media
2. Material written for publication in the media
3. A style of writing used in newspapers and magazines, characterized by the direct presentation of facts or occurrences with little attempt at analysis or interpretation.

The personal information disclosed was in the form of a newspaper article which was published by the Organization. This in itself meets the definition of "material written for publication in the media". Having reviewed the newspaper article itself, the personal information within it is a direct presentation of the facts and is clearly collected and disclosed for journalistic purposes. There is no evidence before me or any evidence from the newspaper article itself that would lead me to conclude that the collection, use and disclosure of the personal information was for any other purpose other than for journalistic purposes.

The Complainant has argued that the publication of the newspaper article was neither reasonable as per the Act nor necessary to the integrity of the newspaper article.

However, my authority under the Act is to determine whether the collection, use or disclosure of personal information was for journalistic purposes only. Once I have established that the use of

personal information was for journalistic purposes only, the Act does not apply and my authority to decide any other issue ceases. Any inquiry into what is a reasonable collection, use and disclosure of personal information, can only come into play if I have jurisdiction to proceed under the Act. In this case, I have determined that the Act does not apply to the matter in question and I can go no further.

[para 21] In *United Food and Commercial Workers, Local 401 v. Alberta (Attorney General)*, 2012 ABCA 130 (CanLII) (*United Foods*), the Alberta Court of Appeal briefly discussed the scope of “journalistic” in PIPA; however the Court’s decision did not rely on this provision to decide the issue before it. It said (at para. 56-57, 59):

The argument depended to a considerable extent on attributing a very expansive meaning to “journalistic”. In using that adjective, it is fair to think that the Legislature intended it to have a wide meaning. However, it is unreasonable to think that the Legislature intended it to be so wide as to encompass everything within the phrase “freedom of opinion and expression”. The chambers judge relied on expert evidence and other materials suggesting that “journalism” has a very wide meaning for constitutional purposes. That may be so, but the proper interpretation of the *Act* depends on what the Legislature thought was included in “journalism”, not what the learned academic authors thought.

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.

...

In summary, it is not helpful to analyze this situation as “journalism”. Not every piece of information posted on the Internet qualifies. If the union wished to publish information about the activities on the picket line in a newspaper or on television, that would likely qualify as journalism. But that need not be decided here, because that is not what the complaints were about.

[para 22] The federal *Personal Information Protection and Electronic Documents Act* (PIPEDA) contains a provision substantially similar to section 4(3)(c) of PIPA, exempting certain activities from the rules governing the collection, use and disclosure of personal information by organizations. It says:

4(2) This Part does not apply to

(c) any organization in respect of 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

[para 23] In *A.T. v. Globe24h.com*, 2017 FC 114 (CanLII), [2017] 4 FCR 310 (*Globe24*), the Federal Court considered the meaning of “journalistic” in section 4(2)(c) of PIPEDA, referring to the Alberta Court of Appeal’s decision in *United Food*. In *Globe24*, a complaint had been made

to the federal Privacy Commissioner that a website, which republishes public documents such as court decisions, collected, used and disclosed the complainant's personal information contained in the public documents in contravention of PIPEDA. Following the federal Commissioner's investigation, the complainant applied to the Federal Court for a hearing on the matter. One issue discussed by the federal Commissioner, and subsequently discussed by the Federal Court, is whether the website collected, used and disclosed personal information for journalistic purposes, within the terms of section 4(2)(c) of PIPEDA. The Court found (at paras. 68-72):

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.

The Alberta Court of Appeal interpreted similar statutory language in Alberta's *Personal Information Protection Act*, SA 2003, c P-6.5: *United Food and Commercial Workers, Local 401 v Alberta (Attorney General)*, 2012 ABCA 130, [2012] AJ No 427, aff'd 2013 SCC 62 (CanLII), [2013] 3 SCR 733 [*United Food*]. Specifically, in considering the adjective "journalistic", the Court of Appeal noted that "it is unreasonable to think that the Legislature intended it to be so wide as to encompass everything within the phrase "freedom of opinion and expression"": *United Food*, above, at para 56. Further, the Court noted that "[n]ot every piece of information posted on the Internet qualifies [as journalism]": *United Food*, above, at para 59.

In my view, the respondent's claimed purpose "to make law accessible for free on the Internet" on Globe24h.com cannot be considered "journalistic". In this instance, there is no need to republish the decisions to make them accessible as they are already available on Canadian websites for free. The respondent adds no value to the publication by way of commentary, additional information or analysis. He exploits the content by demanding payment for its removal.

The evidence indicates that the respondent's primary purpose is to incentivize individuals to pay to have their personal information removed from the website. A secondary purpose, until very recently, was to generate advertising revenue by driving traffic to his website through the increased exposure of personal information in search engines. There is no evidence that the respondent's intention is to inform the public on matters of public interest.

Even if the respondent's activities could be considered journalistic in part, the exemption under paragraph 4(2)(c) only applies where the information is collected, used or disclosed *exclusively* for journalistic purposes. It is clear from the record that Globe24h.com's purposes extend beyond journalism.

[para 24] More recently, the federal Privacy Commissioner brought a reference under PIPEDA to the Federal Court, to consider a similar question of law (*Reference re Subsection 18.3(1) of the Federal Courts Act*, 2021 FC 723 (CanLII)). A complainant had made a complaint to the federal Commissioner's Office that Google LLC (Google) contravened PIPEDA by disclosing links to

news articles that contained personal information about the complainant. One of the questions considered in this reference is as follows:

Is the operation of Google's search engine service excluded from the application of Part 1 of PIPEDA by virtue of paragraph 4(2)(c) of PIPEDA because it involves the collection, use or disclosure of personal information for journalistic, artistic or literary purposes and for no other purpose?

[para 25] The Court found (at paras. 83, 87-89):

An ordinary understanding of the word journalism encompasses content creation and content control as shown by the definition for journalism found in *Globe24h*. It is relevant to note that the test used in that case was proposed by the Canadian Association of Journalists: "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'" (*Globe24h* at para 68). In the matter before me, it is likewise noteworthy that CBC agrees it is an adequate definition or test.

...

The final and determinative aspect of this analysis is the part of paragraph 4(2)(c) which says that it only applies to organizations that collect, use or disclose personal information for journalistic purposes, "for no other purpose". Google argues that "for no other purpose" does not exclude commercial organizations because in order to apply the journalistic exemption, an organization must already be commercial under paragraph 4(1)(a). I agree. However, that does not mean that "for no other purpose" is useless or meaningless. The legislature does not speak in vain and the presumption against tautology means that Courts should avoid adopting interpretations that render any portion of a statute meaningless or redundant (*Bell ExpressVu Limited Partnership v Rex*, 2002 SCC 42 at para 37 and *Placer Dome Canada Ltd v Ontario (Minister of Finance)*, 2006 SCC 20 at para 45).

Justice Mosley's analysis in *Globe24h* is applicable here. He wrote:

[71] The evidence indicates that the respondent's primary purpose is to incentivize individuals to pay to have their personal information removed from the website. A secondary purpose, until very recently, was to generate advertising revenue by driving traffic to his website through the increased exposure of personal information in search engines. There is no evidence that the respondent's intention is to inform the public on matters of public interest.

[72] Even if the respondent's activities could be considered journalistic in part, the exemption under paragraph 4(2)(c) only applies where the information is collected, used or disclosed *exclusively* for journalistic purposes. It is clear from the record that *Globe24h.com*'s purposes extend beyond journalism.

[Emphasis in original.]

It is useful to apply a similar analysis to Google. The primary purpose of Google's search engine service is to index and present search results. This is not a primarily journalistic purpose because although it may facilitate access to information, it contains no other defining feature of

journalism, such as content control or content creation. Even though Google returns some journalism in its search results, its search results clearly extend beyond journalism.

In sum, Google's search engine service does not operate for a journalistic purpose at all, or at least it does not operate for an exclusively journalistic purpose.

Analysis – video footage

[para 26] Following the Alberta Court of Appeal, “journalistic” is not so broad as to cover everything within the phrase “freedom of opinion and expression”. Given the similarities between section 4(2)(c) in PIPEDA and section 4(3)(c) in PIPA, it is appropriate to apply the test adopted by the Federal Court in the decisions cited above: an activity should qualify as journalism only where:

- (1) its purpose is to 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”.

[para 27] The first two elements of this test are reasonably straightforward. With respect to the third part of the test, I do not interpret it as granting me authority to decide what constitutes “good” journalism. In other words, the test does not provide me with jurisdiction to judge the quality of the journalism, or whether the story is in fact fair and accurate. Rather, I will consider whether the *steps* taken by the Organization are such that they involve a ‘self-conscious discipline calculated to provide an accurate and fair description of facts, opinion and debate at play within a situation’. The standard under PIPA is whether the relevant test is met on a balance of probabilities.

[para 28] In this case, the Organization's Community TV has the purpose of informing the community on issues the community values, in a general sense. This is clear from the Community TV YouTube channel and other online sites or pages, which shows F attending community events, interviewing members of the community, leaders within the community, and so on. It is also clear that there is an element of original production in the Community TV posts. The fact that Community TV is not “mainstream media” does not mean that its activities do not constitute journalism. Similarly, the fact that Community TV has only an online presence does not mean that its activities do not constitute journalism.

[para 29] With respect to the video, the Organization was responding to tips from members of the community regarding garbage and drug paraphernalia in the alleyway. F followed up on the tips, and while he was filming, Complainant #1 (and other individual) arrived. Complainant #1 was in a truck that was identifiable as a truck owned by the company that owned the apartment building by the dumpster. It appears that this company may have been responsible for the dumpster, although whether or not that is the case is immaterial here. It seems clear that F did not seek out Complainant #1, but continued to film when Complainant #1 arrived, as his presence in the alleyway was possibly related to the story. While I take the Complainant's point that he clearly did not want to be recorded, it is also not unheard of for a media company to air footage of a subject who makes it clear they do not want to be recorded. In other words, consent or an

apparent interest in being recorded is not necessary to find that the recording was for journalistic purposes.

[para 30] The first two elements of the test – requiring an original production and informing the community about issues it has an interest in – are met. The remaining question is whether the Organization’s activities involve “a self-conscious discipline calculated to provide an accurate and fair description of facts, opinion and debate at play within a situation.”

[para 31] The steps taken by F include following up on tips from members of the community, taking footage of the relevant area, and interviewing (or attempting to interview) several individuals who seemed to have a connection to the issue. In my view, the steps taken by the Organization meet the third element of the test, on a balance of probabilities.

[para 32] I find that the video created and posted by the Organization was for journalistic purposes. There is no indication that the Organization had additional purposes for creating or posting the video, other than to provide what the Organization believes was newsworthy content for the community. Therefore, section 4(3)(c) applies to the collection, use and disclosure of personal information in the video, and I do not have jurisdiction to review the Organization’s actions in that regard.

Analysis – text message

[para 33] The Organization posted an image or screenshot of a text sent by Complainant #2 to F, to the Organization’s Facebook page. The image did not include Complainant #1’s name or contact information. Along with the post is a comment made by F, about the text.

[para 34] In the text, Complainant #2 objected to the video posted by the Organization, and asked that it be removed. Complainant #2 also used Complainant #1’s name, and identified another family member. In the text, the Complainant identified what personal information she believes was posted in the video without authority, and referred to seeing a lawyer about the matter if the video was not removed. The Organization’s comment, posted with the image, states:

The guy from the dumpster videos wife says she's going to sue me...
And that I broke the law by filming in public...
Empty threats to protect their bar: [...] and their name [Complainant #1].

I don't take kindly to threats.
I don't think I'm the one who needs redemption here...
At all.
I don't care if you paid me for advertising... don't care if you drove the bus for my buddies birthday...
You want to talk to me, talk to me, don't lunge at my camera and tell me off, then threaten me when you don't get your way...
It makes you look like sad bullies.
If you got "lawyer-to-sue-[F]" money, y'all got that "clean up the garbage daily" money too.
#realtalk

[para 35] In its submission, the Organization states “[a]fter the video, they threatened to sue me. Which was considered newsworthy. The text message was sent to a business phone number of a journalist.”

[para 36] Posting the text message from Complainant #2 seems to lack an element of original production, as required by the test set out above. The Organization did post a comment with the image of the text; however, the purpose of the comment seems to be to air a dispute between F and a member of the public, and to defend F’s actions in response to an apparent confrontation from Complainant #2.

[para 37] In my view, neither the image of the text, nor the accompanying comment meet the test for journalism. Neither appear to further the purpose of informing the community about an issue the community values; nor does it reasonably meet the standard of a “self-conscious discipline calculated to provide an accurate and fair description of facts, opinion and debate at play within a situation”. As above, this is not about the *merit* of a posted story; rather, the text and accompanying comment do not constitute a story containing accurate and fair facts and opinions to inform the public about a particular issue. Instead, it is better characterized as a private dispute that the Organization decided to make public. That a journalist is involved in the dispute does not necessarily mean that making the dispute public is journalism.

[para 38] Even if there was some journalistic aspect to posting the image of the text and accompanying comment, it appears that the Organization had, or also had, an alternative purpose for posting this information: to air the Complainant’s objection to F’s actions, and respond publicly. Therefore, the purpose of the post was not for a journalistic purpose *and for no other purpose*.

[para 39] The Federal Court made a similar finding in *Globe24*, concluding (at para. 72):

Even if the respondent’s activities could be considered journalistic in part, the exemption under paragraph 4(2)(c) only applies where the information is collected, used or disclosed *exclusively* for journalistic purposes.

[para 40] In *United Foods*, the Alberta Court of Appeal also noted that even if a journalistic purpose existed, if the organization also had another non-journalistic purpose, that purpose would have to be authorized under the Act (at para. 53).

[para 41] Following these decisions, *even if* the Organization disclosed the image of the text, and accompanying comment, for a journalistic purpose, the Organization *also* had another purpose, which falls outside the scope of section 4(3)(c).

[para 42] I find that section 4(3)(c) does not apply to the Organization’s posting of the text message and accompanying comment. I will consider whether the Organization had authority to collect, use or disclose the personal information in the text message. I will also consider whether the Organization had authority to disclose the personal information in the accompanying comment.

If the information is personal information, and section 4 does not apply to the collection, use, and / or disclosure, did the Organization collect, use and/or disclose the Complainant's personal information contrary to, or in compliance with, section 7(1) of PIPA (no collection, use or disclosure without either authorization or consent)? In particular,

- a. If the Organization did not have the authority to collect, use and/or disclose the information without consent, did the Organization obtain the Complainant's consent in accordance with section 8 of the Act before collecting, using or disclosing the information? In particular,**
 - iv. Did the individual consent in writing or orally? or**
 - v. Is the individual deemed to have consented by virtue of the conditions in section 8(2)(a) and (b) having been met? or**
 - vi. Is the collection, use or disclosure permitted by virtue of the conditions in section 8(3)(a), (b) and (c) having been met?**

[para 43] Section 8 of the Act sets out the manner in which organizations can obtain consent. The relevant parts of the provision state:

8(1) An individual may give his or her consent in writing or orally to the collection, use or disclosure of personal information about the individual.

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

- (a) the individual, without actually giving a consent referred to in subsection (1), voluntarily provides the information to the organization for that purpose, and*
- (b) it is reasonable that a person would voluntarily provide that information.*

...

(3) Notwithstanding section 7(1), an organization may collect, use or disclose personal information about an individual for particular purposes if

- (a) the organization*
 - (i) provides the individual with a notice, in a form that the individual can reasonably be expected to understand, that the organization intends to collect, use or disclose personal information about the individual for those purposes, and*
 - (ii) with respect to that notice, gives the individual a reasonable opportunity to decline or object to having his or her personal information collected, used or disclosed for those purposes,*
- (b) the individual does not, within a reasonable time, give to the organization a response to that notice declining or objecting to the proposed collection, use or disclosure, and*
- (c) having regard to the level of the sensitivity, if any, of the information in the circumstances, it is reasonable to collect, use or disclose the information as permitted under clauses (a) and (b).*

(4) Subsections (2), (2.1), (2.2) and (3) are not to be construed so as to authorize an organization to collect, use or disclose personal information for any purpose other than the particular purposes for which the information was collected.

[para 44] With respect to the collection of personal information in the text, Complainant #2 sent the text to the Organization (specifically, to F). The Organization did not solicit that text. As such, the Organization cannot be said to have collected the text merely by having received it. However, the Organization clearly maintained the text, and decided to use and disclose it. As such, it must be said to have collected the information.

[para 45] As Complainant #2 sent the text to the Organization, it may be argued that Complainant #2 is deemed to have consented to the Organization's collection of that text for a particular purpose. In order for section 8(2) to apply, the purpose of the collection, use and/or disclosure must be obvious to the person providing the information, such that they can be found to have consented to that purpose.

[para 46] For example, the Organization might have said that it collected the personal information in the text for the purpose of considering how to address the complaint made in the text by Complainant #2; this would arguably be an obvious purpose. However, the Organization has not expressly provided *any* purpose for the collection of either Complainants' personal information in the text.

[para 47] The Organization did say that the text was "newsworthy", and that it was sent to a journalist. This indicates that the Organization collected the text for the purpose of publicly posting it. Given the context, it is not reasonable to conclude that Complainant #2 would have volunteered the information in the text for that purpose (as required by section 8(2)(b)).

[para 48] None of the other consent provisions in section 8 apply to the collection, use or disclosure of Complainant #2's personal information.

[para 49] There is no indication that Complainant #1 consented to the collection, use or disclosure of his personal information in the text, within the terms of section 8.

[para 50] Lastly, there is no indication that either Complainant consented to the disclosure of their personal information in the Organization's comment that accompanied the image of the text.

[para 51] I find that neither Complainant consented to the collection, use or disclosure of their personal information in the image of the text or accompanying comment.

If the information is personal information, and section 4 does not apply to the collection, use, and / or disclosure, did the Organization collect, use and/or disclose the Complainant's personal information contrary to, or in compliance with, section 7(1) of PIPA (no collection, use or disclosure without either authorization or consent)? In particular,

Did the Organization have the authority to collect, use and/or disclose the information without consent, as permitted by sections 14, 17 or 20 of PIPA?

[para 52] Sections 14, 17 and 20 set out circumstance in which an organization is permitted to collect, use and disclose personal information without consent. Neither party in this case made specific arguments regarding these provisions. However, the Organization referred to the personal information as having been recorded in a public setting. I will therefore consider whether the provisions permitting the collection, use or disclosure of publicly available information apply. The relevant provisions state:

14 An organization may collect personal information about an individual without the consent of the individual but only if one or more of the following are applicable:

...

(e) the information is publicly available as prescribed or otherwise determined by the regulations;

17 An organization may use personal information about an individual without the consent of the individual but only if one or more of the following are applicable:

...

(e) the information is publicly available as prescribed or otherwise determined by the regulations;

20 An organization may disclose personal information about an individual without the consent of the individual but only if one or more of the following are applicable:

...

(j) the information is publicly available as prescribed or otherwise determined by the regulations;

[para 53] Section 7 of the Regulation defines what “publicly available information” is, for the purposes of the Act. It is a lengthy section and so I will summarize it rather than citing it entirely. Publicly available information is:

- information in a telephone directory available to the public, consisting of contact information;
- the information consists of business contact information and is contained in a professional or business directory, listing or notice;
- personal information contained in a government or non-governmental registry but only if the collection, use or disclosure relates directly to the purpose for which the registry is established;
- personal information contained in a record of a quasi-judicial body, if the collection, use or disclosure relates directly to the purpose for which the information appears in the record;
- the personal information is contained in a publication such as a magazine, book or newspaper available to the public and the individual provided that information;

- personal information under the control of an organization outside Alberta that would, if collected from within Alberta, would fall within one of the above categories.

[para 54] The Complainants' personal information in the text message does not fall within any of these categories. The same can be said for the personal information contained in the accompanying comment from the Organization.

[para 55] In her text, Complainant #2 referred to consulting with a lawyer. Had the Organization argued that it collected the information in the text in order to prepare for a possible legal dispute between it and the Complainants, the collection may have been authorized without consent under section 14(d) (collection reasonable for an investigation or legal proceeding). However, nothing in the submissions or other information before me indicates that the Organization had such a purpose in mind. As stated above, the Organization mentioned only that the text was newsworthy, and sent to a journalist. Therefore, I cannot conclude that the collection was authorized under section 14(d).

[para 56] I find that the Organization did not have authority to collect, use or disclose the Complainants' personal information in the text message or accompanying comment, without consent.

If the Organization collected, used, and / or disclosed the Complainants' personal information, and the collection use, and / or disclosure is not subject to section 4 of PIPA, did the Organization collect, use or disclose the information contrary to, or in accordance with, sections 11, 16 and 19 (collection, use and/or disclosure for purposes that are reasonable and to the extent reasonable)?

[para 57] I found that the Organization did not have authority to collect, use or disclose the Complainants' personal information contained in the text message and accompanying comment on Facebook, as it did. Therefore, I do not need to decide if the collection, use or disclosure was in accordance with sections 11, 16 or 19 of the Act.

IV. ORDER

[para 58] I make this Order under section 52 of the Act.

[para 59] I find that the collection, use and disclosure of Complainant #1's personal information in the video was for journalistic purposes, within the terms of section 4(3)(c). Therefore, I do not have jurisdiction to review that collection, use or disclosure.

[para 60] I find that the Organization did not have authority to collect, use or disclose the Complainants' personal information in the text message or in the accompanying comment of the Organization posted to the Organization's Facebook page. I order the Organization to remove the image of the text and accompanying comment from its Facebook page, and any other instance in which it has been published.

[para 61] I order the Organization to notify me and the Complainants in writing within fifty days of receiving this Order, that it has complied with it.

Amanda Swanek
Adjudicator