

**ALBERTA  
INFORMATION AND PRIVACY COMMISSIONER**

**Report of an Investigation into Collection and Use of Personal  
Employee Information without Consent**

**May 13, 2005**

**R.J. Hoffman Holdings Ltd.**

**Investigation Report P2005-IR-004**

**I. INTRODUCTION**

[1] On January 27, 2005, the Office of the Information and Privacy Commissioner (“Commissioner”) received a complaint that R.J. Hoffman Holdings Ltd. (“Hoffmans”) breached the *Personal Information Protection Act* (“PIPA” or “the Act”) by improperly collecting personal information through the use of video surveillance cameras.

**II. JURISDICTION**

[2] The *Personal Information Protection Act* applies to provincially-regulated organizations in Alberta. The Commissioner has jurisdiction in this case because Hoffmans is incorporated and operating in the province of Alberta, and is therefore an “organization” under the Act.

[3] The Commissioner authorized an investigation under subsection 36(2)(e) of PIPA. In conducting the investigation, the investigators spoke with the complainant (a former Hoffmans employee), with a representative of the alarm company that had installed the video cameras, with several of Hoffmans’ current employees, and with members of the Hoffmans management team. An investigator also attended Hoffmans’ Lloydminster office location to inspect the premises and cameras in question.

[4] This report represents our findings in this matter.

### **III. FINDINGS OF FACT**

[5] Hoffmans operates oilfield maintenance services from two locations: Lloydminster, Alberta and St. Walburg, Saskatchewan. The Lloydminster location is the subject of this complaint.

[6] The Hoffmans premises comprise a large vehicle shop, a wash bay, front counter and staff areas. Between both locations, Hoffmans employs approximately 100 people, and owns infrastructure and assets (including vehicles) valued at well into the millions of dollars.

[7] In 2004, video surveillance cameras were installed throughout Hoffmans' two locations. In Lloydminster, there are a total of eight cameras: they are located outside in the truck yard, inside the mechanical shop area, and over the front counter area.

[8] The complainant in this case is a former non-unionized Hoffmans employee. He alleged that his employer conducted video surveillance in contravention of PIPA, and that, through the use of the cameras, Hoffmans managers had intercepted a private verbal communication between him and another employee. The complainant alleged that Hoffmans then used this information to found his dismissal from the company.

[9] In the course of the investigation, we found that there is no audio, zoom or pan capability on any of the cameras. The cameras only record when movement is detected. Videotape is stored for one month then automatically erased. Footage from the cameras can be viewed via the Internet, by entering a password that is unique to Hoffmans, and then observing the images on a computer. The Hoffmans Operations Manager is the only employee with access to the password for the video feed.

[10] The reasons cited by Hoffmans for the installation of the cameras were (a) safety/security and loss prevention, and (b) employee performance management.

[11] As noted above, the video cameras lack audio capacity. As such, we find that the complaint of the improper collection and use of information about an identifiable individual by video cameras, namely, the collection of the individual's private communication, is not a breach of PIPA because there was no collection of the private communication. However, the complaint raises important issues regarding the reasonableness of collection of other information about identifiable individuals (images) through the use of video surveillance for the purpose of managing the employment relationship.

#### **IV. ISSUES**

[12] To resolve this matter, three questions must be determined:

1. Does this collection involve “personal information” or “personal employee information” under the Act?
2. Was the collection reasonably required for the organization’s purposes of establishing, managing or terminating the employment relationship?
3. Did the organization provide adequate notice that the personal information was going to be collected and the purposes for which the personal information was going to be used?

#### **V. ANALYSIS**

##### **1. Does this collection involve “personal information” or “personal employee information” under the Act?**

[13] “Personal information” is defined in subsection 1(k) of the Act as “information about an identifiable individual”. This complaint deals with surveillance cameras. When a surveillance camera is switched on, it is capturing information. If an individual in the frame can be identified, then the captured image is “information about an identifiable individual”. From inspection of the cameras and viewing the video feed using the Hoffmans Operations Manager’s computer, it is clear that individuals being recorded are in fact identifiable. The information collected by these cameras therefore constitutes information about an identifiable individual and falls within the broad category of personal information under the Act.

[14] Personal employee information is a sub-category of personal information. It is defined in subsection 1(j) of the Act as follows:

*“...in respect of an individual who is an employee or potential employee, personal information reasonably required by an organization that is collected, used or disclosed solely for the purposes of establishing, managing or terminating*  
*(i) an employment relationship or*  
*(ii) a volunteer relationship...*  
*between the organization and the individual but does not include personal information about the individual that is unrelated to that relationship.”*

[15] It is important to determine the context in which personal information is being collected, used or disclosed. If an organization

reasonably requires certain personal information, and the sole purpose for collecting the personal information is to establish, manage or terminate the employment relationship, then the information is “personal employee information”.

[16] Hoffmans says it collected the complainant’s personal information and the personal information of other employees (consisting of their images) for purposes of monitoring employee performance, to detect employee theft or property damage and for purposes related to the management of the employment relationship. We are satisfied on the basis of our investigation that Hoffmans was collecting the personal information solely for the purposes of managing the employment relationship, as required by section 1(j). Consequently, this is personal employee information and the rules for personal employee information under PIPA apply.

**2. Was the collection reasonably required for the organization’s purposes of establishing, managing or terminating the employment relationship?**

[17] Section 15 of PIPA provides as follows:

*“15(1) Notwithstanding anything in this Act other than subsection (2), an organization may collect personal employee information about an individual without the consent of the individual if*  
*(a) the individual is an employee of the organization, or*  
*(b) the collection of the information is for the purpose of recruiting a potential employee.*

*15(2) An organization shall not collect personal information about an individual under subsection (1) without the consent of the individual unless*  
*(a) the collection is reasonable for the purposes for which the information is being collected,*  
*(...)*  
*[emphasis added]*

[18] “Use” of personal employee information is treated the same way by PIPA:

*“18(1) Notwithstanding anything in this Act other than subsection (2), an organization may use personal employee information about an individual without the consent of the individual if*  
*(a) the individual is an employee of the organization, or*  
*(b) the use of the information is for the purpose of recruiting a potential employee.*

*18(2) An organization shall not use personal information about an individual under subsection (1) without the consent of the individual unless*

*(a) the use is reasonable for the purposes for which the information is being used,*

*(...)*

*[emphasis added]*

[19] As we are satisfied that Hoffmans' sole purpose for collecting the personal information was to manage the employment relationship, the next matter to decide is whether the personal information was "reasonably required" for that purpose [subsection 1(j)] and whether collection and use of the information (images) by means of video surveillance were "reasonable for the purposes for which the information is being collected" [subsections 15(2) and 18(2)].

[20] Section 2 of PIPA sets out the standard for what is reasonable, as follows:

*"Where in this Act anything or any matter*

*(a) is described, characterized or referred to as reasonable or unreasonable, or*

*(b) is required or directed to be carried out or otherwise dealt with reasonably or in a reasonable manner,*

*the standard to be applied under this Act in determining whether the thing or matter is reasonable or unreasonable, or has been carried out or otherwise dealt with reasonably or in a reasonable manner, is what a reasonable person would consider appropriate in the circumstances."*

[21] The word "reasonable" is not otherwise elaborated in PIPA. To decide what "reasonable" may mean in the context of collecting personal information by video surveillance for the purpose of managing the employment relationship, we have canvassed Alberta and British Columbia arbitral jurisprudence concerning video surveillance of employees, since the provisions for personal employee information under the *Personal Information Protection Acts* of Alberta and British Columbia are similar. Even though the complainant in this case is not a member of a union, we believe the considerable attention given to this topic by labour arbitrators is useful in this discussion. We have also considered decisions under other privacy legislation, such as the federal *Personal Information Protection and Electronic Documents Act* ("PIPEDA").

### **(i) Arbitral jurisprudence**

[22] In *Unisource Canada Inc. and Communications, Energy and Paperworkers' Union of Canada, Local 433* (“*Unisource*”)<sup>1</sup> a 2003 decision from British Columbia, the union was demanding that non-surreptitious video surveillance in the workplace cease. Arbitrator Kelleher contemplated the union’s submission that four distinct but interrelated elements should be considered in surveillance cases. The first is the principle that when a person becomes an employee she or he does not give up the right to privacy and integrity of the person. The second is the relevant privacy legislation; in that case, the *Privacy Act* of British Columbia<sup>2</sup>, which creates an actionable tort for violation of privacy, (including violation of privacy by surveillance). The third is the *Canadian Charter of Rights and Freedoms* (“*Charter*”). Even if the Charter does not apply to private disputes<sup>3</sup>, principles of common law ought to be developed in a manner consistent with fundamental Charter values. Arbitrators and privacy regulators should therefore apply these principles as well. The fourth is the direction in which society is moving to protect privacy.<sup>4</sup>

[23] It is well established that the right to privacy in the workplace is not absolute. The development of the common law and of arbitral and Charter jurisprudence in this area has been remarkably consistent over time, recognizing the “reasonable balancing” of interests involved. As Arbitrator Munroe stated in *Re Pope & Talbot Ltd. and Pulp, Paper and Woodworkers of Canada, Local 8*<sup>5</sup>:

*“One begins with a clear appreciation that as between employer and employee, the latter’s reasonable expectations of privacy are not set aside simply by entering into the employment relationship; and further, that while the Charter is not per se applicable to private sector disputes like this one, the values embedded in the Charter do appropriately influence the development of our common law and arbitral jurisprudence.....”*

[24] This passage is quoted with approval by Arbitrator Blasina in the recent British Columbia arbitration case of *EBCO Metal Finishing Ltd. v. International Assn. of Bridge, Structural, Ornamental & Reinforcing Iron Workers, Shopmens’ Local 712* (“*EBCO*”)<sup>6</sup>. He goes on to state:

*“But just as an employee’s privacy interests require protection against the overzealous exercise of management rights, so also must*

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<sup>1</sup> 121 L.A.C. (4<sup>th</sup>) 437, appeal dismissed on jurisdictional grounds [2004] B.C.J. No. 1261

<sup>2</sup> R.S.B.C. 1979, c. 373

<sup>3</sup> *Retail, Wholesale & Department Store Union, Local 580 v. Dolphin Delivery Ltd.*, [1986] 2 S.C.R. 573

<sup>4</sup> *Unisource*, at QuickLaw pages 5-6

<sup>5</sup> (2003), 123 L.A.C. (4<sup>th</sup>) 115 (Munroe)

<sup>6</sup> [2004] B.C.C.A.A. No 260 (Blasina)

*an arbitrator acknowledge the employer's legitimate business and property interests. What is required, then, is a contextual and reasonable balancing of interests."*

[25] Before the enactment of PIPA, courts and labour arbitration tribunals were determining the reasonableness of employee surveillance by assessing these or very similarly expressed questions:

1. Was it reasonable, in all of the circumstances, to request surveillance?
2. Was the surveillance conducted in a reasonable manner?
3. Were other alternatives open to the company to obtain the evidence it sought?<sup>7</sup>

[26] We are aware that, since the enactment of PIPA in Alberta, the labour arbitration cases of *Re The Calgary Herald and Graphic Communications Union, Local 34M ("Calgary Herald")*<sup>8</sup> and *Amalgamated Transit Union, Local 569 v. City of Edmonton ("Amalgamated Transit")*<sup>9</sup> have been decided. Neither case, however, refers to PIPA and its impact on workplace video surveillance.

[27] In *Calgary Herald*, the Labour Relations Board considered the union's grievance seeking removal of video cameras in the workplace. The Board was asked to apply the four questions posed in PIPEDA Case Summary 114, which we will discuss later in this report. The Board appears to have approached the issue using a standard of reasonableness. It ruled that the installation of the cameras effectively establishes a rule that employees must work in areas where there is camera surveillance. In determining whether the rule was reasonable, the employees' privacy interests should be balanced against the employer's security and safety interests. *Calgary Herald* says that the employer must demonstrate that there are real security and/or safety issues, or both, and a probability that the cameras will assist in addressing those issues. Further, the nature of the surveillance must be reasonable given the circumstances.

[28] *Amalgamated Transit* was a judicial review decision involving the issue of whether the Charter had an impact on an employer's surveillance of an employee. Clackson J. found that there is no binding or persuasive authority that suggests that Alberta's employees have a

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<sup>7</sup> *Doman Forest Products Ltd. and I.W.A., Local 1-357* (1990), 13 L.A.C. (4<sup>th</sup>) 275 (Vickers), at pp. 281-282. See also *Steels Industrial Products and Teamsters Union Local 213*, 24 L.A.C. (4<sup>th</sup>) 259 (Blasina), where two questions were asked to determine the issue of reasonableness: (1) Was it reasonable, in all of the circumstances, to request surveillance? (2) Was the surveillance conducted in a reasonable manner? See also *EBCO*, supra, where these same two questions were asked.

<sup>8</sup> (2004), 126 L.A.C. (4<sup>th</sup>) 386 (Tettensor, Landry and Thompson)

<sup>9</sup> (2004), 124 L.A.C. (4<sup>th</sup>) 225 (Alta. Q.B.)

general right to privacy under the Charter.

[29] In British Columbia, the *EBCO* decision was released subsequent to the enactment of British Columbia's PIPA. Arbitrator Blasina described the effect of PIPA on workplace surveillance as follows:

*"In sum, a "reasonable" standard applies to the PIPA, and the PIPA applies at the workplace; it applies to the employment relationship; and it applies to video surveillance in the workplace. (...)*

*The right to privacy under the PIPA is not absolute. In particular, the PIPA has had little if any altering effect on the arbitral common law in this province regarding surreptitious video surveillance, and indeed seems to amount to codification of the arbitral experience in British Columbia."*

### **(ii) PIPEDA**

[30] The Privacy Commissioner of Canada has considered the concept of reasonableness in the context of use of workplace video surveillance in PIPEDA Case Summary #114, which dealt with a complaint ultimately addressed by the Federal Court of Canada and reported as *Eastmond v. Canadian Pacific Railway* ("*Eastmond*")<sup>10</sup>. In that case, the complainant was an employee of Canadian Pacific Railway, and had complained of the presence of six digital video recording surveillance cameras installed in the mechanical facility at the Toronto Diesel Terminal Yard. The Privacy Commissioner focused his analysis on subsection 5(3) of PIPEDA. PIPEDA applies to the collection, use and disclosure of personal information by federal works, undertakings and businesses such as Canadian Pacific Railway. Even though it is PIPA that applies to Alberta commercial organizations in general, and hence to Hoffmans in the present case, PIPEDA is sufficiently similar to PIPA<sup>11</sup> that the reasoning of the Privacy Commissioner of Canada is relevant to this discussion under PIPA.

[31] Subsection 5(3) of PIPEDA allows organizations to collect, use or disclose personal information only for purposes that a reasonable person would consider appropriate in the circumstances. The Privacy Commissioner of Canada found that, in determining the reasonableness of the use of the video cameras, it was useful to consider the following four points:

1. Is the measure demonstrably necessary to meet a specific need?
2. Is it likely to be effective in meeting that need?

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<sup>10</sup> (2004) FC 852

<sup>11</sup> Order-in-Council 2004-1163 declared PIPA to be "substantially similar" to PIPEDA. See: <http://canadagazette.gc.ca/partI/2004/20040410/html/regle3-e.html>

3. Is the loss of privacy proportional to the benefit gained?
4. Is there a less privacy-intrusive way of achieving the same end?

[32] *Eastmond* was then brought before the Federal Court of Canada. Although the court ultimately overturned the findings of the Privacy Commissioner, the court said it would take into account and be guided by the four factors the Privacy Commissioner set out, since all the parties agreed that the test was an appropriate analytical base from which to launch the determination of reasonableness.<sup>12</sup>

[33] In subsequent cases under PIPEDA, the office of the Privacy Commissioner has applied variations of the four-part test noted above.<sup>13</sup>

[34] On the issue of what is “reasonable” for the purpose of managing the employment relationship, the above four factors under PIPEDA have been of assistance in considering whether the collection and use of personal information using video surveillance was reasonable in the circumstances. We have kept in mind, however, that PIPEDA does not distinguish between personal information and personal employee information, as does PIPA, and does not treat employment situations any different from other situations. In dealing with this matter, therefore, we have been guided by the actual language of PIPA, which we have interpreted in light of the legislative purposes and scheme of PIPA as mandated by the Supreme Court of Canada<sup>14</sup>.

[35] PIPA provides that personal employee information is limited to personal information that is “reasonably required” solely to establish, manage or terminate an employment relationship<sup>15</sup>. PIPA also says that an organization can only collect and use personal employee information without consent if it is “reasonable for the purposes for which the information is being collected”<sup>16</sup>. We conclude that the determination of “reasonableness” in this regard can be determined by considering these questions:

- a) Are there legitimate issues that the organization needs to address

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<sup>12</sup> *Eastmond*, at paragraphs 82, 126 and 127

<sup>13</sup> In Case Summary #264, the Assistant Privacy Commissioner focused on the demonstrated need for the surveillance and how the surveillance was effective in meeting the need. In Case Summary #265, the Assistant Privacy Commissioner considered evidence of a persistent problem, the less-intrusive measures attempted by the organization to manage the problem, and a balancing of the privacy rights of the individual with the informational needs of the organization. In Case Summary #269, the Assistant Privacy Commissioner considered the company’s purposes for the surveillance and whether the company had attempted less privacy-intrusive ways to gather the information it required.

<sup>14</sup> See, most recently, *R. v. Clark*, 2005 S.C.C. 2, [2005] S.C.J. No. 4, at para. 43 (S.C.J.): “It is now well established that ‘the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the schemes of the Act, the object of the Act, and the intention of Parliament’”.

<sup>15</sup> PIPA subsection 1(j)

<sup>16</sup> PIPA subsections 15(2) and 18(2)

through surveillance?

- b) Is the surveillance likely to be effective in addressing these issues?
- c) Was the surveillance conducted in a reasonable manner?

[36] We will consider each of these points in relation to the purposes advanced by Hoffmans for the collection and use of personal employee information through the video cameras.

**a. Safety, Security and Loss Prevention**

[37] Hoffmans contends that the cameras were installed for shop safety, security and loss prevention reasons.

[38] In respect of the shop cameras, Hoffmans described several prior instances of theft of company-owned equipment from the shop area, as well as instances of theft of equipment and clothing belonging to employees. Hoffmans also described two instances where fires had started in a truck in the shop, causing significant damage. Hoffmans had originally suspected employees of wrongdoing, but the cameras provided important information to investigators which vindicated the employees. The front office camera is located at the front entrance, focused on the reception area. This area is normally occupied by one or two female dispatcher/office workers. Office hours are from 6:30 a.m. to 11:00 p.m. During these hours, there is often only one person working the desk, and she is likely to be the only person in the building, with all other staff working out in the field.

[39] It is our view that Hoffmans' management has demonstrated a legitimate concern about theft and property damage, as well as employee safety. As such, we are satisfied that the installation and use of the cameras are reasonably necessary to address a legitimate need.

[40] Individual Hoffmans employees and Hoffmans' management told us that the incidents of theft from and property damage to the facility have all but stopped. There have been no further fires or other wilful property damage since the installation of the cameras, and no reported theft of employer- or employee-owned property. Management and employees attribute the elimination of theft from the shop and staff areas to the presence of the cameras.

[41] We find that the collection and use of information through the video cameras has proven effective in addressing the issues of theft and property damage.

[42] The cameras are visible. Lemieux J. said in *Eastmond* that "the threshold for determining the reasonableness of non-surreptitious video

surveillance is lower than with surreptitious video surveillance; however, a meaningful threshold does exist.”<sup>17</sup> This reasoning is echoed in *Unisource*<sup>18</sup>.

[43] Given their non-surreptitious nature and the fact that they are in plain view, we find that the employees have been aware of the cameras’ presence. The cameras are only operational in common areas of the shop and office. There are no cameras in any employee rest area where there would be a heightened expectation of privacy. Indeed, we share the view of the Federal Court in *Eastmond* that a person whose images might be captured has a lower expectation of privacy because the cameras are located to capture personal information in public areas. This factor persuades us that the loss of privacy is less pronounced than would be the case with surreptitious surveillance in areas where an individual might have an increased expectation of privacy.

[44] Equally important, the recorded images are not accessible to anyone other than Hoffmans’ management. Indeed, the Operations Manager is the only employee who has a password to access the footage from the cameras. If there is no investigation that requires the footage to be reviewed, it is automatically deleted within 30 days, which we consider a reasonable time period. The images are not being watched constantly and the stored images are not accessible by others. These factors persuade us that the impact on privacy is not especially pronounced.

[45] We find that, in respect of the purposes of deterring theft and property damage, there is no reasonable alternative to the surveillance as conducted. Hoffmans’ drivers arrive at the truck yard to begin their shift at all hours of the day and night. Some drivers prefer to start work as early as 3:00 a.m. and Hoffmans accommodates this. As such, drivers are entering and leaving the truck yard at times when no supervisor and indeed no other employees are on the premises. Conversely, the front office dispatchers are often there until at least 11:00 p.m., alone on site.

[46] We find that in all of the circumstances, the surveillance as conducted is reasonable to address the safety and security issues.

## **b. Employee Performance Management**

[47] In terms of the collection of personal employee information for purposes of monitoring employee performance, we come to the opposite conclusion.

[48] While Hoffmans has an interest in ensuring employees are fulfilling

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<sup>17</sup> *Eastmond*, at paragraph 159.

<sup>18</sup> *Supra*, at part V.

their work commitments, this general interest alone does not mean that collection and use of personal information through video surveillance is reasonably required for managing employees. Hoffmans did not describe any specific difficulties with worker productivity in the Lloydminster location. There was no evidence presented that the employees were doing anything other than performing their job duties as expected. We conclude that the use of the cameras for purposes of employee management was not, in this case, reasonably necessary to address a legitimate to manage employee performance.

[49] Canadian arbitrators have generally condemned the use of surveillance cameras to record the performance and productivity of workers<sup>19</sup>. In *Puretex Knitting Co. Ltd. and Canadian Textile and Chemical Union*<sup>20</sup>, Arbitrator Ellis wrote at p. 29:

*“The full-time use of closed-circuit television systems for constant observation of the work performance and conduct of employees in an industrial setting would be widely regarded, I believe, as seriously offensive in human terms. I am certainly of that view. And as M. Dulude in the Liberty Smelting case suggests, it is difficult to conceive of circumstances in which considerations of efficiency would justify such an affront to human dignity...”*

[50] The Federal Court in *Eastmond* also considered the use of video surveillance as a means of monitoring employee productivity, even though at issue in *Eastmond* was the use of surveillance for security purposes:

*“Constant camera surveillance of an employee’s productivity, whether that is the primary purpose or just incidental, would obviously be preoccupying and may understandably be regarded in some circumstances as a diminution of one’s sense of personal dignity or privacy...”*<sup>21</sup>

[51] Even if one accepts that the location and non-surreptitious nature of the cameras in this case results in a lower employee expectation of privacy, the notion of constant supervision of employees who have not given reason for Hoffmans to suspect them of wrongdoing, and hence have not given rise to any need for surveillance, is not reasonable for the purposes of ss. 1(j), 15 and 18 of PIPA. Unlike the injury or property damage that could ensue from another truck fire or similar incident, the possibility that management might at some point witness an employee avoiding work or taking longer breaks than they are entitled to does not justify the constant and invasive supervision of their daily activities.

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<sup>19</sup> *Eastmond*, at paragraph 133.

<sup>20</sup> (1979) 23 L.A.C. (2<sup>nd</sup>) 14 (Ellis)

<sup>21</sup> *Eastmond*, supra, at paragraph 159.

[52] With respect to the management of employee performance, we conclude that PIPA does not in these circumstances authorize Hoffmans to collect or use personal information for that purpose. It is worth noting that, on the facts in this case, Hoffmans would have great difficulty convincing us that surveillance cameras would be any more effective in meeting the perceived need to monitor employee performance than a well-timed visit from a supervisor. This could, we believe, be easily accommodated in a smaller workplace, such as Hoffmans' Lloydminster site. The cameras capture the activities of the mechanics at work, and these employees tend to work the same hours as the on-site Operations Manager and the front-office dispatchers. Any of these other employees can monitor the progress of the mechanics. Such managerial supervision should be instituted before resorting to video surveillance in these circumstances.

### **c. Summary**

[53] We are therefore satisfied that collection and use of personal employee information through the cameras is "reasonably required" and "reasonable" for the purposes of safety, security and loss prevention advanced by Hoffmans. We conclude, by contrast, that collection and use of personal employee information through the cameras is not "reasonably required" or "reasonable" for the purpose of employee performance management advanced by Hoffmans regarding the Lloydminster location.

### **3. Did the organization provide adequate notice that the personal information was going to be collected and the purposes for which the personal information was going to be used?**

[54] Section 15(2)(c) of the Act provides:

*"An organization shall not collect personal information about an individual under subsection (1) without the consent of the individual unless*

*(...)*

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

[55] The question of whether Hoffmans has adequately notified its employees about the purposes for the surveillance cameras remains unclear. There has been no formal, written notification. Hoffmans'

Operations Manager has some recollection of alerting his employees orally, but this is not documented. Both the complainant and Hoffmans agree that the cameras are located in plain view of employees and any member of the public who enters the shop. Further, the complainant understood that the cameras were likely there for reasons of ensuring safety and security.

[56] Despite this, it is our view that Hoffmans should explicitly notify employees about the cameras and their purposes, preferably in writing through a written policy with each employee acknowledging the notice in writing, or through a posting in a conspicuous location within the premises. A posting would, in our view, be desirable because customers and others might also be in the areas under surveillance from time to time and they should be notified of the surveillance.

## **VI. OTHER CONSIDERATIONS**

[57] During the course of the investigation, we became aware that Hoffmans does not have a privacy officer, a privacy policy or processes to support privacy compliance, as required by sections 5 and 6 of PIPA. We will make recommendations about this matter below.

## **VII. CONCLUSION**

[58] We are satisfied that the collection and use of personal information through video surveillance by Hoffmans for the purposes of loss prevention, safety and security at its Lloydminster location is in compliance with PIPA.

[59] We find that it is not reasonable for Hoffmans to collect or use personal employee information obtained through video surveillance for purposes of employee performance management. Collection and use of the information for performance management would contravene sections 15 and 18 of the Act.

[60] We find that Hoffmans has failed to give adequate notification of the collection of personal employee information and has therefore contravened subsection 15(2)(c) of the Act.

## **VII. RECOMMENDATIONS**

[61] We recommend that Hoffmans:

- Amend its employee orientation package materials to include references to privacy compliance generally and the presence of and purposes for the video cameras specifically and provide this Office with a copy of this amended package on or before June 30, 2005;
- Post clear signage in conspicuous locations throughout the premises giving notice of the presence of the video cameras and provide this Office with written confirmation that this has occurred on or before June 30, 2005;
- Adopt policies and practices to support privacy compliance and provide this Office with copies of them on or before June 30, 2005;
- Appoint a privacy officer accountable for Hoffmans' privacy compliance and identify that individual to this Office on or before June 30, 2005.

[62] Hoffmans cooperated fully with this investigation.

[63] This file is now closed subject to Hoffmans' provision of the material mentioned in the above recommendations.

Submitted by:

Elizabeth Denham, Director, *Personal Information Protection Act*

-and-

Kristine Robidoux, LL.B.  
Contract Portfolio Officer

Office of the Information and Privacy Commissioner