

**ALBERTA
INFORMATION AND PRIVACY COMMISSIONER**

**Report of an Investigation into the Collection and Use
of Personal Employee Information**

November 4, 2005

Precision Drilling Corporation

Investigation Report P2005-IR-009

I. INTRODUCTION

[1] On March 21, 2005, the Office of the Information and Privacy Commissioner (“the Commissioner”) received a complaint that Precision Well Servicing (a division of Precision Drilling Corporation, hereafter “Precision”) breached Alberta’s *Personal Information Protection Act* (“PIPA” or “the Act”) by improperly collecting personal employee information from the black box or Event Data Recorder (“EDR”) in a privately-owned motor vehicle and using the data in a decision to terminate the employment of the employee who was operating the vehicle for work purposes.

II. JURISDICTION AND INVESTIGATION

[2] PIPA applies to provincially-regulated organizations in Alberta. The Commissioner has jurisdiction in this case because Precision is an “organization” as defined under subsection 1(i) of the Act.

[3] The Commissioner authorized an investigation under subsection 36(2)(e) of PIPA. In conducting my investigation in this matter, I spoke with the complainant (the owner of the vehicle), with the former Precision employee who was operating the vehicle, with members of Precision’s

management team, and with the external legal counsel representing Precision. I reviewed all written correspondence between the parties and several Precision policies and manuals, including their Vehicle Safety Commitment/Disclosure Form, Corporate Human Resources Policy and Procedure, Privacy Policy, Employee Privacy Consent, Application for Employment, Accident Investigation Procedures, and the Rig Manager Guideline Checklist and Responsibilities. I also examined the Incident Report and Collision Statements relating to the accident, as well as the report from the accident reconstruction firm that conducted the retrieval of the EDR data.

III. STATEMENT OF FACTS

[4] Precision is an oilfield service provider in Canada. Precision Well Servicing is a division of Precision Limited Partnership, and operates a number of contractor oil and gas well services in Canada. As indicated above, we will refer to Precision Well Servicing and Precision Limited Partnership collectively as “Precision”.

[5] The complainant in this case is the spouse of a former Precision employee. I will refer to the complainant as “S.P.” and the former employee as “E.P.”.

[6] E.P. was hired by Precision in July of 2004 as a Rig Manager. As Rig Manager, a large part of his responsibilities required traveling to and from all of the drilling sites in his assigned geographical area, often in the company of other workers, and generally monitoring the drilling operations.

[7] On July 22, 2004, E.P. signed Precision’s Vehicle Safety Commitment/Disclosure Form (“Safety Commitment”), which sets out Precision’s expectations for vehicle safety on the job as well as possible consequences for an employee’s failure to comply. It sets out Precision’s policy as follows:

“...I am aware of (Precision’s) policy on vehicle safety, which states all provincial traffic regulations must be adhered to. This includes traveling at posted speed limits and wearing seatbelts...”

[8] E.P. was given the option of using a company vehicle or his own vehicle to drive to and from the job sites. E.P. elected to use his own vehicle, and as such submitted and received reimbursement for any mileage incurred when driving his vehicle in the course of his employment. Precision believed that E.P. was the owner of the vehicle, and stated to me that at no time did E.P. advise Precision otherwise.

[9] As stated above, E.P.'s duties involved the supervision of well sites. He spent a portion of each day driving. For the majority of E.P.'s employment, he traveled an average of 150 kilometres each day.

[10] On December 30, 2004, E.P. was driving a 2003 Chevrolet pick-up truck that he had leased for the purposes of his employment with Precision, but that had been financed and insured by his spouse, S.P. E.P. was listed on S.P.'s insurance policy as an "additional driver". E.P. was driving with another Precision employee to a Precision jobsite when he lost control of the vehicle and slid down an embankment, rolling onto a frozen creek bed. The passenger suffered minor injuries.

[11] The damaged vehicle was towed to the Pike Wheaton Chevrolet Ltd. ("Pike Wheaton") car dealership in Red Deer, Alberta where it was to be repaired.

[12] E.P. reported the accident to safety personnel at Precision and completed all accident reporting documentation required by law and by Precision's corporate policy. In his statements, E.P. provided information that at the time of the accident, both he and his passenger were wearing their seatbelts.

[13] Precision's procedures require that accidents be investigated and analyzed to identify the root cause of the accident. Precision advises that safety personnel asked E.P. for consent to obtain the EDR crash data from the vehicle in order to confirm that E.P. was in compliance with traffic laws and Precision safety policies and procedures. Precision advises that E.P. gave them verbal consent to do so, and the next day, followed up with written consent confirming the verbal consent.

[14] Precision states that in E.P.'s presence, the Precision Field Superintendent faxed the written consent form to Pike Wheaton, the car dealership where the truck was being repaired. The accident reconstruction specialists retained by Precision, Renneberg-Walker Engineering Associates ("Renneberg-Walker"), then proceeded to retrieve the EDR data. When I requested a copy of the consent form as part of my investigation, Pike Wheaton could not locate the consent form, but advised that their procedures require that consent be obtained before they will allow the retrieval of such data by a firm such as Renneberg-Walker.

[15] Precision could also not produce the signed consent form, but provided me with sworn Affidavits from two Safety Managers, an Area Manager and a Field Superintendent, wherein each of these individuals attest that E.P.'s consent was obtained.

[16] E.P. denies giving Precision any consent, verbal or written, to collect or review the EDR data. In any event, the vehicle owner, S.P., submits that it was her consent that should have been obtained, and she stated that she was not asked for her consent. S.P. stated that she would not have given consent for this collection.

[17] The data was retrieved by Renneberg-Walker and provided to Precision. It showed that E.P. was not wearing his seatbelt at the time of the accident, in contravention of provincial traffic laws and Precision corporate safety policy.

[18] Based on the data retrieved from the EDR, E.P. was terminated with cause from his employment at Precision.

IV. ISSUES

[19] This case concerns the collection of information from the EDR in S.P.'s vehicle. I must determine the answers to the following questions:

1. Is the EDR data “personal information” or “personal employee information” as contemplated by PIPA?
2. Was the information collected in contravention of PIPA?

I will deal with each of these questions in turn.

V. ANALYSIS

1. Personal Information vs. Personal Employee Information

a) Personal Information

[20] PIPA subsection 1(k) defines “personal information” as information about an identifiable individual. The EDR does not itself identify an individual. It does not collect the name or other personal characteristics of individuals driving the motor vehicle. It does, however, retain the driving data of whoever was operating the vehicle during the (normally) 5 seconds prior to a “triggering event”. A triggering event can be either a “Deployment Event” or a “Non-Deployment Event”. A Deployment Event normally involves the deployment of the vehicle’s emergency restraint system (the airbags). A Non-Deployment Event is an event severe enough to “wake up” the sensing algorithm in the EDR, but not severe enough to deploy the airbags in the vehicle. The EDR can record the vehicle’s speed, engine speed, throttle position, the status of the brake light switch, and the status of the driver’s seat belt buckle switch (buckled or unbuckled) at the time of the event. This information is stored in a buffer that is capable of storing five values of each data element. Values are recorded

at one-second intervals. The data can then be downloaded into readable format.

[21] When E.P. was involved in the motor vehicle crash (a “Non-Deployment Event”), and called in to Precision to report the crash, he was identified as the driver of the vehicle, and any driving data collected by the EDR would be about him as the driver of that vehicle. Precision did not seek to obtain the EDR data in order to determine who was driving the vehicle; they already knew who was driving. Rather, Precision was seeking to obtain detailed information about the manner in which E.P. was operating the vehicle prior to the crash. I am therefore satisfied that the EDR data is in fact “information about an identifiable individual” as contemplated by PIPA.

[22] Further, I find that the personal information in question is that of E.P., and not his spouse. The information does not relate in any way to her ownership of the vehicle; rather, it relates to E.P. as a driver of that vehicle. Therefore, any consent that is given with respect to the collection of this information is properly sought from E.P. as the driver of the vehicle.

b) Personal Employee Information

[23] “Personal Employee Information” is a subcategory of personal information. It is defined in subsection 1(j) as follows:

1(j) “Personal Employee Information” means, in respect of an individual who is an employee or a 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 work relationship*

between the organization and the individual but does not include personal information about the individual that is unrelated to that relationship.

[24] Precision requires all new employees to sign a Vehicle Safety Commitment/Disclosure Form (“Safety Commitment”). The Safety Commitment provides that it is a condition of employment that an employee must wear her/his seatbelt at all times in the driving of company or owner-operated vehicles. E.P. was hired for a position that involved a lot of driving. He drove an average of 150 kilometres each day for the purpose of his employment; mileage for which he was reimbursed by Precision. I find that E.P.’s position as Rig Manager clearly

contemplated a great deal of driving, and a need for compliance with traffic laws and Precision safety policies. I accept that ensuring compliance with traffic laws and safety policies to be a reasonable component of the management of this employment relationship. Precision was collecting the EDR information solely to determine whether E.P.'s driving complied with traffic laws and Precision safety policies. To do otherwise would put E.P.'s employment in jeopardy and as such, the information was collected solely for the purposes of managing his employment with Precision and determining whether he had breached the terms of his employment agreement with Precision. I find that the EDR data constitutes "Personal Employee Information" as contemplated by PIPA.

2. Was the EDR data collected in contravention of PIPA?

a) With Consent

[25] As a general rule, an organization may not collect personal information about an individual unless that individual consents to the collection of that information [PIPA subsection 7(1)(a)].

[26] Precision maintains that E.P. consented to the collection and use of the EDR data. E.P. denies giving consent. As indicated above, Precision cannot locate the written consent form that E.P. allegedly signed, but I have reviewed four sworn Affidavits from various Precision employees who all attest that consent was sought and freely given by E.P. Specifically, Precision's Area Manager and Field Superintendent both recall having conversations with E.P. wherein E.P. indicated that he had no objection to the retrieval of the EDR data. The Field Superintendent advises that he contacted E.P. and relayed to him that his written consent was required to enable the removal of the data from the vehicle. E.P.'s response was "...go ahead, I don't have anything to hide".

[27] I am persuaded by the thoroughness of the Affidavits and other evidence provided by Precision, and conclude that consent was obtained.

[28] This Office supports the process that Precision has in place for the obtaining of written consent for the retrieval of this type of EDR data, particularly in the case of an employee-owned vehicle. Obviously, Precision's processes are not perfect, as they cannot locate the written consent form. I suggest that Precision implement more robust record management/document control mechanisms to ensure that written consent forms are retained for a reasonable period of time as appropriate.

b) Without Consent

[29] While I have found that consent in this case was present, I acknowledge that E.P. nonetheless maintains that there was no consent. I will take the opportunity to comment on the collection of the EDR data without consent with a view to determining whether, in this case, the collection of the EDR data would still be authorized under PIPA. I do so, however, with the caveat that these comments not be taken as a suggestion that consent should be dispensed with. We believe that Precision's practice of obtaining written consent should be maintained.

i. To Manage the Employment Relationship

[30] Under the Act, Personal Employee Information may be collected without the consent of the employee if the requirements of section 15 are met:

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,*
- (b) the information consists only of information that is related to the employment or volunteer work relationship of the individual, and*
- (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 the purposes for which the information is going to be collected.*

[31] E.P. was an employee of Precision. The requirements of 15(1) are met.

[32] In respect of the requirements of 15(2), I am satisfied that the collection of the EDR data is reasonable for the purposes for which the information is being collected. E.P. signed the Precision Safety Commitment when he was first hired for the position. As Rig Manager, he was not only required to abide by the Safety Commitment himself, but also to ensure the compliance of his field personnel. In a safety meeting

held on August 14, 2004, E.P. was again alerted to the necessity that Rig Managers ensure their employees are wearing their seatbelts at all times when operating or traveling in a motor vehicle on company business. E.P. signed the document to indicate his understanding of this requirement. The collection of the EDR data is therefore reasonable for the purposes of ensuring compliance with traffic laws and Precision safety policy. In my view, subsection 15(2)(a) is complied with.

[33] I am also satisfied that the EDR data consists only of information that is related to the employment relationship, given that E.P. was in fact traveling to a work site during work hours in the company of another Precision employee, at the time of the accident. As such, I find that subsection 15(2)(b) is complied with.

[34] I also find that there was appropriate notification under subsection 15(2)(c). The Precision Safety Commitment in use at the time of this incident did not specifically reference the anticipated collection of EDR data. It does, however, provide as follows:

“I am aware that if I am en route to an assignment for Precision Well Servicing and am found not wearing my seatbelt, not having insisted that my passengers are also buckled up, or driving any faster than the posted speed limit, there are consequences.”

[35] Notification also occurred in a more direct manner by Precision’s Field Superintendent. In his Affidavit, he advises that he learned that Pike Wheaton would not permit Renneberg-Walker to retrieve the EDR data from the vehicle without written consent from the owner of the vehicle. (Recall that I have already found that under PIPA, it is not the “owner” of the vehicle who is solely authorized to consent or not to the collection of information from the vehicle; rather, it is the individual whose activities are captured or monitored by the information. In this case, that is E.P. as the driver of the vehicle). The Field Superintendent advises that he then contacted E.P. and relayed to him that his written consent was required to enable the removal of the data from the vehicle. E.P.’s response was “...go ahead, I don’t have anything to hide”. Similarly, Precision’s Area Manager deposed that he also alerted E.P. that Precision would need to download the EDR data from the vehicle.

[36] I consider this adequate notification. I point out for further certainty as to E.P.’s understanding, the fact that the next day, E.P. attended at Precision’s Operations Center and in the presence of the Field Superintendent, he wrote out a consent form for this retrieval, which consent was faxed in his presence to Pike Wheaton.

[37] I find in all of the circumstances, then, that a reasonable person would have clearly understood the nature of the intended collection and the purposes of that collection. The requirements of PIPA subsection 15(2)(c) have been met.

VI. CONCLUSION

[38] I conclude that Precision's collection of the EDR data from the vehicle operated by E.P. in this case was authorized by PIPA. I find that consent was present. Even without consent, I find that the collection of this information was authorized by section 15 of the Act.

[39] I recommend that Precision conduct a review of the document control processes in place when written consent is obtained. Any gaps should be addressed in order to ensure the storage and retention of such documents conforms to Precision's document retention policy and applicable law.

[40] I recommend that Precision amend its Vehicle Safety Commitment to clearly contemplate the collection, use and disclosure of EDR data, regardless of the vehicle's owner, where the vehicle is being operated for work purposes.

VII. COMMENTS

[41] All parties cooperated fully with this investigation.

[42] This file is now closed.

Submitted by:

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Office of the Information and Privacy Commissioner