

**ALBERTA  
OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**Report of an Investigation into the  
Disclosure of Personal Information**

**March 19, 2007**

**West Energy Ltd.**

**Investigation Report P2007-IR-003**

**I. INTRODUCTION**

[1] An individual (“the Complainant”) submitted a complaint to the Information and Privacy Commissioner (“the Commissioner”) about West Energy Ltd. (“West Energy” or “the Organization”). The Complainant alleged that the Organization disclosed her personal information on the internet and on a compact disc (CD) that was made available at her town’s general store.

[2] In response to this complaint, the Commissioner elected to conduct an investigation to determine whether the Organization’s activities represented a contravention of the *Personal Information Protection Act* (“PIPA” or “the Act”).

**II. JURISDICTION**

[3] PIPA applies to provincially-regulated private sector organizations operating in Alberta, including West Energy Ltd. PIPA sets out the provisions under which organizations may *collect, use, or disclose* personal information, and also places a duty on organizations to protect personal information in their custody or control against such risks as unauthorized access, collection, use, disclosure or destruction. Organizations are also required to develop and follow policies to meet their obligations under the Act.

[4] Section 36 of the Act empowers this Office to conduct investigations to ensure compliance with any provision of PIPA and make recommendations to organizations regarding their obligations.

[5] The Commissioner has jurisdiction in this case because West Energy Ltd. is an “organization”, as defined in section 1(i) of the Act, and is operating in Alberta. The information at issue, described below in paragraph 8, is also considered “personal information” as defined in section 1(k) of PIPA.

[6] Pursuant to section 49 of PIPA, the Commissioner authorized me to investigate this matter. This report outlines my findings and recommendations, which may be made public according to section 38(6) of the Act.

### **III. INVESTIGATION**

[7] For the purposes of this investigation, I spoke and met with the Alberta Energy and Utilities Board’s (“EUB” or “the Board”) Privacy Coordinator, Manager of Business Operations & Development, legal counsel, and Senior Applications Officer. I also spoke with and received a written response from West Energy’s external counsel. I also had discussions with the complainant and her representative and reviewed the information posted on the EUB website and on the CD.

#### **The Complaint**

[8] According to the Complainant, West Energy collected her personal information in relation to proposed drilling in the Drayton Valley area. She was advised that her information was collected in the event of a drilling incident or emergency. West Energy collected her name, address, phone number, medical information, and the times that she would not be home. The Complainant also alleged that West Energy collected her neighbours’ children’s names and “secret passwords used by strangers in case of emergency”, school names and pick up and drop off times. She stated that information such as when children are home alone and which residents’ homes would be vacated was also collected.

[9] The Complainant initially alleged that West Energy disclosed all of this personal information on its website in a document referred to as a “Line List”. She later realized that it was actually the EUB’s website which displayed West Energy’s Line List for a period of approximately six months. It was contained in the Organization’s well licence application submitted to the EUB’s online application system. The Board’s application system automatically makes applications submitted accessible to the

public. The investigation under the *Freedom of Information and Protection of Privacy Act* into the EUB's activities, as they relate to this first disclosure, can be found in Investigation Report F2007-IR-002, which is the companion to this report. This report will focus on West Energy's activities under PIPA.

[10] In a second disclosure incident, the Complainant discovered that similar personal information was stored on several CDs that were made publicly available at her town's general store. Apparently, a neighbour advised her of his knowledge of her health condition and explained that he learned about it from information contained on the CD. The Complainant picked up one of the CDs and provided it to me. It contained West Energy's application package to the EUB and some supporting documents, including the personal information described by the Complainant. I confirmed with the owner of the general store that a West Energy representative placed the CDs there along with a hardcopy in a binder available for sign out. The Complainant contended that no sign out sheet was present and CDs appeared to be there for the taking.

### **Response to the Complaint**

[11] West Energy stated that it submitted two drilling licence applications to the EUB in early 2006 for proposed sour oil wells. Both wells were categorized by the EUB as "Category E" "critical sour" wells and were considered "non-routine". As part of the licence application and emergency response planning process, the Organization collected the personal information described by the Complainant from 247 residents and landowners in the vicinity of the proposed well sites through a contractor. The personal information collected was:

- Names, ages, and address of persons occupying the dwelling
- Names, address and legal land description of person owning the dwelling
- Phone numbers
- Workplace information (i.e. name and phone number)
- Health concerns/condition
- For children, their school name, location, bus information and pick up and drop off times
- Whether evacuation assistance, in the case of an emergency, was requested by the stakeholder (landowner/resident)
- Whether the stakeholder may be contemplating objecting to West Energy's application, and
- Whether stakeholders had concerns or issues relating to the application.

[12] This information was compiled into at least 15 different documents and maps, as required by the Board. Some of these documents were submitted to the EUB in hardcopy form or through the online application process. West Energy stated that its understanding was that the Board's practice in processing an electronic application was to determine if it was deficient in terms of application requirements, and to remove any personal information before making the application public on the EUB website.

[13] In West Energy's view, all of the personal information submitted in its electronic application was required by the EUB. The application was initially submitted in March of 2006, but was closed by the EUB due to an error on the electronically filed application schedules. When the Organization resubmitted its application the following May, West Energy alleged that the EUB advised it to submit as much information as possible. This resulted in submission of the detailed Line List containing the personal information which offended the Complainant.

[14] As part of West Energy's application and pre-hearing process, the Organization was required to submit its application and Emergency Response Plan ("ERP") to various interveners, which it did on a CD and in hardcopy. In order to facilitate other parties' access to the information, West Energy also placed one hardcopy and three CDs containing its application with a sign out sheet at a general store near the proposed drilling sites (a common industry practice, according to the Organization).

[15] West Energy argued that prior to making its application and ERP documents available on CD, it reviewed the records to ensure that no personal information was included that was not already public (i.e. phone numbers in public directories), required to be made public, or that was confidential. Some personal information such as names, addresses and telephone numbers of affected residents were already in the public domain through the application disclosure requirements. West Energy did not place the "Confidential Residential Package", the Line List, some information regarding citizens without objections to West Energy's application, and various maps on the CDs.

[16] Despite this effort, the Organization acknowledged that some documents were mistakenly included on the CDs and hardcopies. The documents that were not intended to be disclosed were the ERP and related map as well as documents that related to residents' concerns or objections. The latter item contained the specific health conditions and concerns of particular residents. The ERP documents revealed the evacuation information for residents.

[17] West Energy had authority to collect the personal information it obtained from landowners and residents as part of the well licensing process. The *Oil and Gas Conservation Act* (“OGCA”) and the *Alberta Energy and Utilities Board Act* describe the emergency planning requirements and stakeholder consultations that are necessary to apply for a drilling licence. The *Oil and Gas Conservation Regulations* (“OGCR”) require that applications be in a prescribed form and include the documentation specified in Directive 56, “Energy Development Application Guide and Schedules” [sections 2.010 and 2.020, OGCR]. The OGCR also requires that the organizations prepare an ERP in accordance with Directive 71, “Emergency Preparedness and Response Requirements for the Upstream Petroleum Industry”, as published by the Board.

[18] Among other things, Directive 56 and Directive 71 taken together outline that organizations applying for licences must determine who affected parties are, the names of all residents including children, ages, medical conditions or special needs for evacuation, telephone numbers, and an explanation of their concerns or objections and provide maps. Much of this information must be submitted to the EUB. The *Alberta Energy and Utilities Board Rules of Practice* (“Rules of Practice”) imply that when an application is filed, a proceeding is commenced and documents filed in connection with the proceeding are placed on the public record. Any interveners must also be provided with the application and supporting documents.

#### **IV. ISSUES**

[19] Investigation Report F2007-IR-002 establishes that the EUB had authority to collect the personal information in question from West Energy and outlines from where authority to do so was derived. A description of the personal information required to be collected by energy companies for well licence applications is also summarized in that report. The Complainant’s concerns focused on whether West Energy’s two disclosures were consistent with the requirements of the Act. The issues that will be examined in the remainder of this report are as follows:

- a) *Did the Organization disclose the Complainant’s personal information for purposes that are reasonable, as required by section 19(1) of PIPA?*
- b) *Did the Organization limit disclosure of the Complainant’s personal information to the extent reasonable, in accordance with section 19(2) of PIPA?*

## V. ANALYSIS

### a) Did the Organization disclose the Complainant's personal information for purposes that are reasonable, as required by section 19(1) of the Act?

[20] Section 19(1) of PIPA specifies that:

*An organization may disclose personal information only for purposes that are reasonable.*

The purpose of the first disclosure of personal information to the EUB's online system was to submit an application for sour well drilling. Well licence applications must be submitted electronically and this form of submission automatically places the data onto the EUB's Integrated Application Registry which is accessible on the internet. Applications considered non-routine for reasons of public involvement require inclusion of residents' and landowners' personal information to the EUB for consideration of whether to grant a licence. Section 2.3.3 of the EUB's Directive 56 states in part:

*When filing a nonroutine application for reasons of participant involvement, the applicant must include a written summary of the outstanding concerns/objections for EUB review and consideration....*

[21] When there are outstanding objections to a well application, as in the present case, the EUB requires the applicant to attach supporting information to its application to the Board that includes personal information about the objectors:

*If YES, you must attach*

- *the name, address, telephone number, and legal land description of the party with outstanding concerns/objections;*
- *a copy of written concerns/objections received, if available;*
- *a chronology of the participant involvement program conducted with the party;*
- *a discussion of steps taken to mitigate the outstanding concerns/objections;*
- *a copy of the project specific information package provided;*
- *a list of other documents distributed; and*
- *an explanation of how you would like the EUB to proceed with your application [section 7.12.1, Directive 56].*

[22] In addition to these requirements, audit materials were also necessary for submission to the EUB because of the category of well that was proposed in this case. Sections 7.10.21, 7.10.2.2 and 7.10.2.6 of Directive 56 require similar information described above about the individuals with whom West Energy consulted as well as the dates they were contacted. Thus, West Energy had authority to disclose the personal

information specified to the EUB. Investigation Report F2007-IR-002 also found that:

*[36] Section 34 of the FOIP Act requires that personal information be collected directly from the individual the information is about unless one of the conditions in section 34 applies. One of those conditions ~ contained in section 34(1)(a)(ii) ~ allows for “another method of collection [when it] is authorized by ...another Act or regulation under another Act...”. In this case the OGC Regulation (AR 151/ 71) stipulates that an applicant must supply certain information further to Directive 56. Therefore the initial collection must be completed by an applicant (in this case, the Organization) and section 34(1)(a)(ii) allows for the indirect collection by the EUB.*

*...*

*My conclusion is that the EUB had the authority to collect the information - that was eventually disclosed on its website - under Directives #56 and #71, and under section 26(2) of the ERCA.*

[23] Although consent is generally required to disclose individuals' personal information, in this case West Energy did not require the Complainant's consent since the disclosure was to the EUB, a public body authorized to collect the information:

*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...*

*(c) the disclosure of the information is to a public body and that public body is authorized or required by an enactment of Alberta or Canada to collect the information from the organization [section 20(c), PIPA].*

That PIPA permits disclosure of information under certain circumstances without individuals' consent, presumes that those very circumstances the Act describes are reasonable.

[24] In terms of the second disclosure of documents containing personal information on the CDs and hardcopies to interveners and for sign out, this course of action also appeared to be consistent with section 19(1). That is to say, the purpose for making the CDs available was to provide individuals with West Energy's licence application to facilitate access and transparency during the pre-hearing process.

[25] Section 12 of the Rules Practice describes the process for an organization to make a request for confidentiality since documents are placed on the public record:

*Subject to this section, all documents filed in respect of a proceeding, including any submissions or other documents filed prior to the commencement of the proceeding, must be placed on the public record [section 12(1), Rules of Practice]*

Despite documents being on the public record, interveners must, according to section 24 of the Rules of Practice, be provided with their own copies:

*After an intervener files a submission under section 23, the applicant shall provide the intervener with copies of any of the following documents and material that the applicant has not previously provided to the intervener:*

- (a) the application and any other documents filed in support of the application;*
- (b) any material filed as documentary evidence.*

The Board required disclosure of West Energy's well licence application and the application must contain certain personal information of residents and landowners. I find that both disclosures by the Organization, first to the EUB's application system and then on the CDs, were for reasonable purposes in accordance with section 19(1) of PIPA.

**b) Did the Organization limit disclosure of the Complainant's personal information to the extent reasonable, in accordance with section 19(2) of PIPA?**

[26] Section 19(2) of PIPA limits disclosure of personal information by an organization as follows:

*Where an organization discloses personal information, it may do so only to the extent that is reasonable for meeting the purposes for which the information is disclosed.*

This provision requires that even when there is a reasonable purpose for a disclosure, an organization disclose the specific information required and necessary for the purpose and no more. Although it was established in the previous section that a reasonable purpose existed in both disclosures, this issue relates to whether West Energy limited the disclosures to a reasonable extent in both cases.

[27] The EUB outlines the information it requires in licence applications in Directive 56. Section 7.12.1 of Directive 56, cited in paragraph 21 of this report, outlines what personal information is to be included in an application and also includes a sample Line List in the Appendix. That sample displays the following columns:

- Land location
- Land Interest
- Name/address/phone no
- Date of personal consultation

- Date of confirmation of non-objection
- Consultation by phone or meeting
- Notification by fax, registered or regular mail
- Documents distributed and date of distribution
- Date additional EnerFAQs distributed
- Comments

[28] Under each of these column headings, an example is listed. The example under the Comments section states “Declined copies of EnerFAQs #8 and EUB brochure; Wait a min. of 14 days prior to submitting application.” There is no suggestion in Directive 56 that vacation dates, children’s’ secret passwords or medical information ought to be listed, which is what West Energy included in the Comments column. Rather, the Comments column seems to require notes about the specific public consultation process.

[29] The purpose of the Line List is to demonstrate to the Board that proper public consultation was conducted by the applicant and notification occurred prior to the submission of an application. This is consistent with the sample Line List and with section 7.10.2.2 of Directive 56 entitled “Personal Consultation Notification Requirements”, which states that:

*The licensee must submit a record of the personal consultation and notification program that was conducted, using a tabular format similar to the Sample Participant Involvement Summary Form (Appendix 4).*

[30] Although another requirement of Directive 56 outside, of the Line List, is for the Organization to explain concerns and objections, which may include medical concerns, these concerns are to be summarized according to the EUB, who pointed to section 2.3.3, cited earlier:

*When filing a nonroutine application for reasons of participant involvement, the applicant must include a written **summary** of the outstanding concerns/objections for EUB review and consideration....[emphasis added]*

This is supported by section 2.2.1 of Directive 56:

*(4) The applicant must include people with special needs who reside in the area: “special needs” includes those who require evacuation assistance. **While these people are to be included, sensitive materials and information must be kept confidential** [emphasis added].*

[31] According to the EUB, a summarized version would list “health concern” rather than the more detailed medical condition of “asthma” for example. I found no evidence that could lead the Organization to believe that the EUB would review applications and sever personal information prior to making applications public. No suggestion of such action by the

EUB is made in Directive 56. Rather, I found that the EUB's Rules of Practice have an implicit expectation that applicants should be guided by common sense. The Rules of Practice and the EUB's notices to applicants state that well applications become part of the public record. I find that it was West Energy's responsibility to ensure that it submitted no more information than is required by the Board and that no more information was made public than reasonable.

[32] While West Energy maintained that it was verbally directed by an EUB coordinator to include as much as possible in its Line list, the EUB rejected that this could be the case given the intent of the Line List. The EUB asserted that including such detailed personal information in the Line List would not serve the purpose of this document and that application coordinators are trained to be specific about their request for information when an application is deficient.

[33] This is not to say that West Energy had no authority to disclose the evacuation information and other detailed personal information to the EUB. Directive 71 outlines the requirements for an Emergency Response Plan; however, the ERP is required to be submitted in hardcopy form directly to the EUB's Public Safety Group during the application process. This process ensures that sensitive personal information is not made public. Had the Organization adhered to the Line List requirements, only the consultations with residents and landowners would have been made public on the EUB's website. Moreover, the personal information about specific health concerns, vacations, and children would have only been submitted to the Board, pursuant to Directive 71, in hardcopy instead of the worldwide web.

[34] Directive 71 states:

*A licensee is required to obtain the following information from all persons, residences, local authorities, and public facilities listed in Section 2.2.2.1:*

- exact location of the residence or place of business, including egress routes (legal description or address);*
- name of key contact and a 24-hour contact telephone number (home, business, cell phone, or other) and an alternate contact;*
- names of all family members in residence;*
- number of occupants, specifying adults and preschool and school-age children;*
- names of those with special needs, such as those who require evacuation assistance, request early notification/communication, have no telephones, require transportation assistance, or for whom there may be a language barrier;*
- any additional concerns or comments; and*
- any other information deemed necessary to ensure that effective emergency response procedures are developed.*

*While members of the public are not legally required to provide personal information, the licensee must clearly explain that the information is important to ensure an effective emergency response and thus provide public protection and safety. Personal information is protected by the privacy provisions of the Freedom of Information and Protection of Privacy Act (FOIP)<sup>1</sup> and **must be kept confidential at all times.***

***In keeping with the spirit of FOIP, a licensee must only acquire information necessary to the ERP, and this information should only be provided to key emergency responders who require it for immediate response purposes in the event of an emergency and to the EUB.*** *If members of the public are unwilling to provide personal information, a licensee must consider those residents to have special needs and include the appropriate emergency response measures, such as early notification, in the ERP. [Section 2.2.4, Directive 71, emphasis added].*

[35] Here, the EUB recognizes that the ERP information is not intended to be widely circulated and for that reason it requests hardcopies only be sent to its Public Safety Group. Indeed, when West Energy disclosed its ERP in advance of the public hearing, as directed by the Board, the version it submitted had the sensitive personal information severed from it. The EUB's direction given to energy companies is as follows:

*A licensee is required to submit two paper copies of the ERP to the EUB for review and approval. It may distribute the ERP to others electronically as long as a hard copy is provided upon request.*

*A licensee must ensure that additional copies (either full or partial) of the ERP are provided to all persons requiring one. The need for distribution is determined through communication with all responders during plan development. **Confidential resident and personal information must only be included in the EUB and key responder copies.***

*A licensee is also required to provide a copy of the ERP, excluding resident personal information, to any resident within the EPZ who requests in writing to have a copy. Once the ERP is submitted to the EUB, it may be requested and released, with the exception of personal information, under the Freedom of Information and Protection of Privacy Act. [Section 4.10, Directive 71].*

[36] It appears that West Energy combined the requirements of Directive 56 and Directive 71 in a single submission of the Line List without due consideration for the fact that this information would be made public. Emergency planning information required by Directive 71 is not intended to be submitted through the EUB's online system. PIPA requires that organizations ensure they limit the personal information disclosed to the extent necessary to satisfy a reasonable purpose. In this case, the Organization caused a wider (public) disclosure of personal information that the EUB did not suggest or require to process West Energy's well

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<sup>1</sup> Reference to FOIP is made here since, as a public body, the EUB's collection, use and disclosure activities are governed by FOIP.

licence application. This disclosure was in contravention of section 19(2) of PIPA.

[37] In the case of the CD disclosure, West Energy acknowledged that it did not intend for certain personal information to be disclosed:

*Specifically, the Disclosed Intervener Listings contained some limited personal intervener information that was not otherwise already in the public domain (i.e. phone books) or published via the interveners' own submissions to the EUB. Similarly, through the inadvertent disclosure of the ERP Map, information relating to dwelling occupancy and residents with special needs or requiring evacuation assistance was disclosed.*

[38] Although the CD did not contain the Line List, it did have information about specific landowners' concerns or objections. These concerns or objections related to residents' specific health issues they were concerned about as well as some details about when children are home alone. As stated earlier, this information should not have been made public and amounts to a second contravention of section 19(2) of the Act.

## **VI. OTHER CONSIDERATIONS**

[39] Although the EUB's Directives demonstrated that the disclosures by West Energy were in excess of what was necessary, it must be acknowledged that the OGCA and OGCR, the Board's Directives and Rules of Practice are detailed and complex. In discussions with the EUB, it was identified that there have been other instances in which energy companies submitted more personal information to the EUB's online application system than was required. These instances were addressed on a case-by-case basis. It is not surprising, given the volumes of information that must be reviewed, that there might be some confusion about what to submit in what form and to whom. Not only are there are numerous documents that must be produced during the application and hearing process, but also a few versions of the same document with varying degrees of personal information removed must also be produced.

[40] Energy companies must make it their business to understand the licensing requirements; navigating them is simply an undeniable part of operations. It may be that some energy companies are submitting licensing applications as they have for decades without consideration for the implications of PIPA. Some energy companies may relax privacy considerations when disclosure is made to a public body as opposed to another organization or private individual. Perhaps when a regulatory body requires personal information from an energy company that is seeking approval of an application, organizations might be more willing than not to disclose information in the name of transparency and

diligence. Of course, this is not in the interest of individual privacy; disclosure to anyone, whether an individual, a public body, a custodian or another organization must be in compliance with PIPA.

[41] Regardless of what the reason may be, it is clear that energy companies would benefit from some enhanced guidance on the privacy implications of their applications. The role that the EUB might play in offering that guidance is addressed in Investigation Report F2007-IR-002, produced by this office.

[42] When the EUB was notified that West Energy's application contained excessive personal information, it removed the Organization's Line List from its website. The Board also sent correspondence to individuals in order to alert them of the fact that their personal information had been available for viewing on the EUB's website.

[43] I also note that when West Energy determined that documents on the CDs should not have been disclosed, its counsel wrote to interveners' representatives and individuals who were provided with either hard or electronic copies and requested the return of them to the Organization. It requested that any copies made also be destroyed. West Energy made efforts to retrieve the CDs and hardcopies left at the general store for sign out. The CD I obtained from the Complainant was returned to West Energy. Despite all of these efforts, approximately sixteen copies were not recovered.

[44] West Energy also appointed a privacy officer and implemented a privacy policy before the conclusion of this investigation. Both of these are duties set out in sections 5(3) and section 6 of PIPA.

## **VII. RECOMMENDATIONS**

[45] In the preceding section it was determined that West Energy's two disclosures of the Complainant's personal information were for purposes that were reasonable in accordance with section 19(1) of the Act. However, in both disclosures, West Energy contravened section 19(2) of PIPA by failing to limit the personal information disclosed to the extent reasonable. In response to this incident, I recommended that the Organization:

1. Train the Organization's newly appointed Privacy Officer in the requirements of privacy legislation to be responsible for compliance with PIPA in all aspects of business.
2. Ensure that West Energy's newly appointed Privacy Officer, or some other individual trained in privacy, reviews with the EUB personal information requirements for the application process. This will offer

- the Organization an edge in receiving guidance from the EUB, which the Board has agreed to begin developing in response to Investigation Report F2007-IR-002 to assist the industry.
3. West Energy's newly appointed Privacy Officer, or some other individual trained in privacy, review all licence applications and supporting documents prior to disclosure to the EUB and other stakeholders to ensure that no more personal information than is required is disclosed.
  4. Develop a privacy policy that details precisely West Energy's collection, use and disclosure practices as they relate to applications for licensing by the EUB. This policy should be easily accessible to the public.
  5. In all agreements with West Energy's contractors engaged in the public consultation process, include a privacy provision outlining that the parties agree to adhere to PIPA and that the contractor will operate in accordance with West Energy's privacy policy.

[46] I am of the view that these recommendations will improve the Organization's compliance with PIPA. The Complainant was satisfied by this course of action and agreed it resolved her complaint.

[47] West Energy agreed to implement the recommendations as set out above. The Organization was cooperative throughout this process and took the matter seriously. This matter is now closed.

## **VIII. CONCLUSIONS**

[48] Energy companies and their agents should consider reviewing their personal information practices as they relate to EUB licence applications to ensure that disclosures are being made in compliance with PIPA.

Submitted by:

Preeti Adhopia, Portfolio Officer  
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