



Impacts of Privacy Law on Managing Health & Safety in the Workplace

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Information and Privacy Commissioner





The Information Age

- More info to collect about us:
 - Financial
 - Health (medical history, DNA, prescriptions)
 - Surveillance
- More ways to collect it:
 - Databases
 - Networks
 - Brokers (Choicepoint, Transunion, Equifax, etc)
 - Googled anyone lately?
- More ways to use it.
- More ways to disclose it:
 - Databases
 - Networks





Take the workplace for example

- Background checks
- Security clearances
- Surveillance cameras
- Keystroke logging software
- Global positioning devices
- Drug/alcohol tests
- Genetic information
- Health info





There have got to be some rules!

- Session overview

- What is PIPA?
- Some health and safety issues
- The Office of the Information and Privacy Commissioner
- Questions





What is PIPA?

- *Personal Information Protection Act and Regulation* – came into effect January 1, 2004
- Provides common sense rules for collection, use and disclosure (CUD) of personal information (PI) by private-sector organizations in Alberta
- Balances the right of an **individual** to have personal information protected, with the need of **organizations** to CUD PI for reasonable purposes





PIPA applies to...

“Organizations” which include:

- Corporations and unincorporated associations
- Trade unions (*Labour Relations Code*)
- Partnerships (*Partnership Act*)
- Individuals acting in a commercial capacity
- Professional Regulatory Organizations
- Non-profit organizations (to a limited extent)





PIPA applies to ...

“Personal Information”

- Defined as “information about an identifiable individual”
- Applies whether personal information is recorded or not
- Does not apply to aggregate or anonymous information





PIPA does not apply to...

Business Contact Information

- Defined in the Act as: “name, position name or title, business telephone number, business address, business e-mail, business fax number and other similar business information”
- PIPA does not apply as long as this information is CUD’d solely to contact that person in his/her capacity as an employee or official of the organization





PIPA on a slide...

- Applies to the collection, use and disclosure of personal information by organizations.
- Generally an organization needs to get consent for collection, use and disclosure of personal information: section 7.
- The consent rule is mitigated somewhat by situations where PIPA deems there to be consent and specified exceptions to consent: ss. 14, 17, 20.
- A person is deemed to have consented to collection, use and disclosure for a purpose when they voluntarily give their information for that purpose: section 8.





Consent

- Can be express, implied, or opt-out
- Verbal or written
- Should be obtained before or at time of collection
- May be withdrawn or changed
- Is invalid if obtained by deceptive or misleading means





Personal Employee Information

- A special category of personal 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.*
- “Employee” includes a person employed by the organization to perform a service
 - e.g., apprentice, volunteer, student, contractor, agent or prospective employee





Personal Employee Information

- Organizations can CUD personal employee information without consent when reasonably required within the employer-employee relationship
- What is “reasonably required”?
- **Must still notify current employees that information will be collected, used or disclosed, and of the purpose(s) for doing so**





Personal Employee Information

- S. 15: Collection of personal employee information.
- Collect pei of employees or potential employees without consent provided:
 - the collection is reasonable given its purposes,
 - only information related to the employment relationship is collected, and
 - employees are first given reasonable notice of the collection and the purposes of it.





Personal Employee Information

- S. 18: Use of personal employee information.
- Use pei of individuals who are employees or being recruited as potential employees without consent provided:
 - the use is reasonable given its purposes,
 - only information related to the employment relationship is used, and
 - employees are first given reasonable notice of the use and the purposes of it.






Personal Employee Information

- S. 21: Disclosure of personal employee information.
- Disclose pei of individuals who are employees or being recruited as potential employees without consent provided:
 - the disclosure is reasonable given its purposes,
 - only information related to the employment relationship is disclosed, and
 - employees are first given reasonable notice of the disclosure and the purposes of it.






So, I want to do background checks on my employees....

- Is this information reasonably required for the employment?
 - What kind of business am I in?
 - Do my employees handle cash or credit info?
 - What is the risk?
 - Are there alternatives to collecting information: ie restrict access to credit info?





So, I want to do background checks on my employees....

- What is there to collect?
 - References.
 - Criminal record (CPIC)
 - Credit reports.
- What does the info tell me?
 - It does not tell me if a person is honest.
 - CPIC tells me if they have been convicted of a crime.
 - Credit report tells me if they handle credit well. Credit reports can be laden with errors. The info is not always well-reported by sources. Corrections are not always made.
 - References can be unreliable.





Investigation report: Hoffmans

- IR P2005-004
- Complaint about cameras in the workplace used for performance.
- Investigator found:
 - There was documented theft.
 - No reasonable alternative to cameras.
 - Cameras did not record sound or pan or zoom.
 - Tapes were erased.
 - This was reasonable collection of info for security.
 - Would not be reasonable for managing employee performance, but that was being done.
 - Employer should inform employees.
 - Applied labour law.





Looking after personal information.

- **Organizations are responsible for the personal information in their custody or under their control: section 5.**
- **Organizations have to designate someone to be responsible for compliance: section 5. PICK THE RIGHT PERSON.**
- **Organizations have to use reasonable efforts to ensure personal information collected , used or disclosed is accurate and complete: section 33.**
- **Organizations have to make reasonable security arrangements: section 34.**





Medical Information

- PIPA does not apply to health information as defined in the *Health Information Act*, that is, information resulting from health services paid for by Health Care Insurance which is collected, used or disclosed for health care purposes
- PIPA does apply to health information that is personal employee information, and information CUD'd by privately paid health care providers
- Medical information needed for an employment purpose is not the same as medical information for health care purposes





Medical Information – Contd.

- So, organizations can collect, use and disclose PEI without consent, BUT NOT WITHOUT RESTRICTION.
- Again, to be PEI, must be reasonably required to establish, manage or terminate the employment relationship
- **Example:** may be generally reasonable to know what accommodations are needed for an employee to return to work; however, an employer rarely needs to know diagnosis and treatment information.





Drug and Alcohol Testing

- Different kinds of testing: pre-access, reasonable cause, post-incident
- Test results may be personal information; procedures may reveal personal information
- Consider whether the information is personal information (PI) or personal employee information (PEI)
- If PI - must be collected, used and disclosed for “reasonable purposes” and only to the extent that is reasonable for meeting those purposes. Organization will need consent.





Drug and Alcohol Testing – Contd.

- If test results are PEI, organization doesn't need consent to use or disclose, but must be reasonably required to establish, manage or terminate the employment relationship. (Hard to collect without consent, in most cases).
- Consider:
 - what is the purpose(s) for testing?
 - will the testing accomplish that purpose?
 - is collection reasonably required for the purpose(s)?
- How will employees be notified that their information will be collected, used or disclosed, and the purposes(s) for doing so?





Incidents and Injuries

- PIPA allows collection, use and disclosure of personal information without consent if required or authorized by law
- For example, OH & S legislation may require organization to
 - investigate and report on workplace incidents
 - maintain a record of injuries or illnesses that occur at the worksite
- Again, PIPA requires organizations notify employees that their information will be collected, used and disclosed and the purposes of doing so





WCB Claims

- WCB collection of personal information is regulated under FOIP – WCB has statutory authority to collect
- PIPA allows organization to provide personal information to WCB without consent





Other Considerations

- Whether employee medical information, drug and alcohol test results, reports of injuries or illnesses, WCB information, etc., consider:
 - who will have access to the information (need to know)?
 - where will the information be maintained (e.g. separate from personnel file)?
 - how will it be secured?
 - how long will it be kept?
 - what will it be used for?
 - who will it be disclosed to and under what circumstances?
 - what kind of consent, if any, is required?





Other Considerations

- OIPC shares jurisdiction in this area with human rights commissions, arbitrators and courts. Looking for consistency.
- Testing is not a panacea. It has a down side in the workplace.
- Evidence based decision-making: we need to know how a particular measure effects workplace safety, ie does drug testing reduce workplace incidents?
- This is a factor in deciding if the collection of that information is reasonable.





Access to Personal Information

- Individuals have a right to access their personal information under PIPA, including health information.
- Organizations must respond to a request for access within 45 days, and response must meet criteria set out in s. 29 of the Act
- Organizations may be authorized or required to refuse access to some personal information (see section 24(2) and 24(3) of PIPA)





Accountability

- When an organization engages services of a person, the organization is responsible for that person's compliance with the Act
- This does not relieve that person (individual or organization) from responsibilities or obligations under the Act
- Examples:
 - An organization requires its contractor to collect drug test results before hiring employees
 - An organization contracts another organization or individual to provide OH&S services on its behalf





Accountability – Contd.

- Examples - contd.:
 - An organization contracts with a lab to collect personal information
 - An organization has a contractual relationship with an Employment Assistance Program (EAP) provider
 - Organization pays for an independent medical exam of an employee





Accountability – Contd.

- Consider
 - contractual provisions that address privacy and security of information
 - who has custody and control of the information
 - how to handle requests for access
 - how to handle breaches and/or complaints
 - how is information shared between organization and agent/contractor





Unionized Employees

- Organization may collect, use and disclose personal information without consent if necessary to comply with a collective agreement
- Is the collective agreement silent on a particular issue?
- PIPA allows Commissioner authority to refer a complainant to an alternative dispute resolution process (e.g. grievance) to resolve a matter





Office of the Information and Privacy Commissioner (OIPC)

- Commissioner is an Officer of the Legislative Assembly – independent of government
- Oversight for:
 - Freedom of Information and Protection of Privacy Act
 - Health Information Act
 - Personal Information Protection Act
 - Access to Motor Vehicle Information Regulation
- Edmonton and Calgary offices





Office of the Information and Privacy Commissioner (OIPC)

- General powers of Commissioner include:
 - conduct investigations to ensure compliance
 - review an organization's response to a request for access to personal information
 - conduct inquiries and issue orders
 - provide general (non-binding) advice
 - research
 - comment on existing / proposed programs
 - point out failures to assist applicants





PIPA Resources

- OIPC
 - Tel.: (403) 297-2728
 - Fax: (403) 297-2711
 - Toll Free: 1-888-878-4044
 - Website - <http://www.oipc.ab.ca/pipa/>
- Access and Privacy Branch, AB Government Services
 - Website - <http://www.psp.gov.ab.ca/>
 - Information Line (780) 644-PIPA (7472)
 - Consultants List





Questions?

- Office of the Information and Privacy Commissioner of Alberta
 - www.oipc.ab.ca
 - 1 780 422-6860
- Government of Alberta
 - www.psp.gov.ab.ca
- Office of the Information and Privacy Commissioner of British Columbia
 - www.oipc.bc.ca
- Office of the Privacy Commissioner of Canada
 - www.privcom.gc.ca

