

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER**

**ORDER P2021-12**

December 7, 2021

**CLEARVIEW AI, INC.**

Case File 015017

**BACKGROUND**

[para 1] On or about February 3, 2021, the Office of the Information and Privacy Commissioner of Alberta issued Investigation Report P2021-IR-01 (the Report) in conjunction with the Office of the Privacy Commissioner of Canada, the Commissioner d'accès à l'information du Quebec and the Office of Information and Privacy Commissioner for British Columbia (collectively, the Offices). The Report may be referred to for its full force and effect. The Report has been provided to Clearview AI, Inc. (Clearview).

[para 2] The Report found, among other things, that Clearview engaged in the collection, use and disclosure of personal information through the development and provision of its facial recognition application, without the requisite consent, contrary to section 7(1) of the *Personal Information Protection Act*, SA 2003, c. P-6.5 (PIPA).

[para 3] The Report also found that Clearview's collection, use and disclosure of personal information through the provision of its facial recognition application was for a purpose that a reasonable person would find to be inappropriate, contrary to sections 11, 16 and 19 of PIPA.

[para 4] As a result, the Report recommended, among other things, that Clearview:

- i. cease offering the facial recognition services that have been the subject of this investigation to clients in Canada;
- ii. cease the collection, use and disclosure of images and biometric facial arrays collected from individuals in Canada; and
- iii. delete images and biometric facial arrays collected from individuals in Canada in its possession.

[para 5] The Report also said:

[123] Should Clearview maintain its refusal to accept the findings and recommendations of four independent Canadian privacy enforcement authorities, we will pursue other actions available to us under our respective Acts to bring Clearview into compliance with federal and provincial privacy laws applicable to the private sector.

[para 6] On April 26, 2021, the Offices sent a letter to Clearview. That letter said, in part:

4. We ask that Clearview provide a written response with regards to its intention to follow the report's recommendations.

5. Our Offices would welcome proposals that outline how Clearview would address recommendations ii and iii.

6. We ask that Clearview provide its response, as well as any proposals, no later than May 21, 2021.

7. Last, we remind Clearview that, should it fail to follow the recommendations above, three oversight bodies would be seeking binding orders in their respective provinces. Additionally, we remind Clearview of the OPC's ability, pursuant to ss. 14(1) of PIPEDA, to file an application in Federal Court, generally within one year of the issuance of our report of findings, in respect of any matter we refer to in the report.

[para 7] By letter dated May 25, 2021, Clearview responded to our Offices. As to complying with the recommendations contained in the Report, Clearview said:

With regard to the first recommendation, ceasing offering the facial recognition services that were the subject of the investigation in Canada, as you are aware, Clearview has already not been providing any services to any clients in Canada since the summer 2020.

Clearview is willing to continue this undertaking for a further eighteen (18) months. It is also prepared, in the event that it does come back into Canada, to offer an audit trail of the searches conducted and require a facial recognition policy of each of its clients.

With regard to items #2 and #3, as we indicated in our letter of November 2020, this is impossible to execute, even if it were warranted legally, which we do not believe to be the case.

It is simply not possible, merely from photographs, to identify whether the individuals in the photographs are in Canada at the time the photograph was taken, or whether they are Canadian citizens, residents, etc. Furthermore, as mentioned in November, not only does Clearview not view Canadian law as applying, but to the extent it did use the photographs would be permissible as being publicly available.

Therefore, while Clearview has already gone beyond its obligations and is willing to make some accommodations and met some of the requests of the Privacy Commissioners, it cannot commit itself to anything that is impossible and or [sic] required by law.

[para 8] I was not able to accept Clearview's position on Recommendations ii and iii, as it had come to my attention that Clearview had already agreed to do something similar in the State of Illinois. An article published in BuzzFeed News on May 7, 2020, attached a Memorandum of Law filed by Clearview on May 6, 2020 in the United States District Court for the Northern District of Illinois Eastern Division. In its Memorandum of Law (page 3), Clearview said, among other things:

...All photos in Clearview's database that were geolocated in Illinois have been blocked from being searched through Clearview's app...Going forward, Clearview has constructed a "geofence" around Illinois, and will not collect facial vectors from images that contain metadata associating them with Illinois...Clearview will not collect facial vectors from images stored on servers that are displaying Illinois IP addresses or websites with URLs containing keywords such as "Chicago" or Illinois"...Clearview is also implementing an opt-out mechanism to exclude photos from Clearview's database...

[para 9] As a matter of procedural fairness, I decided to put the matter of the Memorandum of Law to Clearview before issuing my Order. On September 22, 2021, I sent a letter to Clearview in which I asked Clearview, in light of the Memorandum of Law, to please explain to me why Clearview could not comply with Recommendations ii [2] and iii [3] in Alberta.

[para 10] In its reply to me on October 5, 2021, Clearview said, in part:

Briefly, the position expressed in the memorandum of law that you cite in your letter is not at all inconsistent with the position I expressed in my letter of May 25<sup>th</sup>, 2021, in which I indicated that Clearview could not execute the recommendations #2 and #3 (even assuming that it had an obligation to do so, which it does not).

You will notice that in the memorandum of law, the undertaking is with regard to photographs that were geolocated as emanating from Illinois. As you will no doubt appreciate, this is a very imperfect proxy for identifying individuals from Illinois. Even with the meta-data from the photographs that do contain the meta-data, this only would show where the photograph was taken, and would in no way identify the residence of the people in the photographs.

The request and recommendations from Privacy Commissioners were to cease the collection use and disclosure of images and biometric facial arrays collected from individuals in Canada and to delete those images. As we indicated previously, this simply cannot be done.

What Clearview undertook to do in Illinois was, to the extent that there were very rough proxies available for such determination, (the meta-data of the photographs, or if the word "Chicago" appeared in the photograph) to rely on those proxies to make a limited good faith undertaking.

To repeat, there is no inconsistency whatsoever between what Clearview offered in Illinois and what I said in my letter. In any event, Clearview maintains that any such imposition would be entirely unwarranted for the reasons already provided.

[para 11] Clearview has described what it undertook to do in Illinois as a "very imperfect proxy" for identifying individuals from Illinois. In my view, there is nothing to prevent me from also directing a "very imperfect proxy" that Clearview can pursue to comply with my order.

## ORDER

[para 12] As noted at paragraph 33 of the Report, “Provincial privacy legislation applies to any private sector organization that collects, uses and discloses information of individuals within that province.” In Alberta, that jurisdiction over the collection, use and disclosure of personal information within Alberta derives from the *Organizations in the Province of Alberta Exemption Order*, SOR/2004-219, which states:

An organization, other than a federal work, undertaking or business, to which the *Personal Information Protection Act*, S.A. 2003, c. P-6.5, of the Province of Alberta, applies is exempt from the application of Part 1 of the *Personal Information Protection and Electronic Documents Act*, in respect of the collection, use and disclosure of personal information that occurs within the Province of Alberta.

[para 13] Therefore, I make the following orders under section 36(1)(b), section 52(3)(e) and section 52(3)(g) of PIPA. I order that Clearview:

- i. cease offering all of the facial recognition services that have been the subject of this investigation to clients in Alberta;
- ii. cease the collection, use and disclosure of images and biometric facial arrays collected from individuals in Alberta; and
- iii. delete images and biometric facial arrays that have been collected from individuals in Alberta and that are in its possession.

[para 14] To comply with this Order, Clearview is to take similar good faith steps as those to which it referred in the Memorandum of Law in Illinois.

[para 15] I require that Clearview report to me, within 50 days of the date of this Order, on the good faith steps that it has taken to comply with this Order.

[para 16] I reserve the right to issue future orders, as required, to assist Clearview in complying.

Jill Clayton  
Information and Privacy Commissioner