

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER P2018-08**

December 3, 2018

**7-ELEVEN CANADA, INC.**

Case File Number 003619

**Office URL:** [www.oipc.ab.ca](http://www.oipc.ab.ca)

**Summary:** The Applicant made an access request under PIPA for a copy of surveillance tapes of an incident involving him and another individual. The Organization refused to provide the Applicant with the requested video.

The Applicant requested a review of the Organization’s response, and subsequently requested an inquiry, which the Commissioner granted.

The Adjudicator determined that the video contains personal information of third parties, which must be withheld. As the Applicant specified that he is seeking the unaltered video, in order to “pursue” the other individual in the video, the Adjudicator accepted the Organization’s arguments that it was not reasonable to require the Organization to sever the third party information from the video and provide the Applicant with access to the remainder.

**Statutes Cited:** **AB:** *Personal Information Protection Act*, S.A. 2003, c. P-6.5, ss. 24, 52.

**Authorities Cited:** **AB:** Order F2010-023.

**I. BACKGROUND**

[para 1] The Applicant was involved in an incident with another individual in May 2016. The Applicant made an access request under the *Personal Information Protection Act* (PIPA) to 7-Eleven Canada, Inc., (the Organization), believing that the incident was recorded by the

Organization's surveillance camera. The Applicant requested a copy of the video. In his request, he noted that the Calgary Police Service had also requested a copy of the video for an investigation. The Applicant asked the Organization that it not "alter, destroy, conceal, damage, purge, erase, hinder or in any way obstruct such requested [May 18<sup>th</sup>, 2016] footage as it is required to pursue to the individual responsible" (access request dated May 21, 2016).

[para 2] The Organization responded to the Applicant, refusing access to the video under section 24(3) of the Act. The Organization stated that the Applicant may wish to follow up with the Calgary Police Service with respect to its investigation.

[para 3] The Applicant requested a review of the Organization's response. The Complainant subsequently requested an inquiry, which the Commissioner granted.

## **II. ISSUES**

[para 4] The Notice of Inquiry, dated July 24, 2018, states the issues for inquiry as the following:

1. Did the Organization refuse to provide the Applicant access to his personal information that was in its custody or control?
2. If yes, did it do so in accordance with section 24(2) (discretionary grounds for refusal) or with section 24(3) (mandatory grounds for refusal)? In particular,
  - a. Did the Organization properly apply section 24(2)(c) (information collected for an investigation or legal proceeding) to any of the withheld information?
  - b. Does section 24(3)(a) (threat to life or security) apply to any of the withheld information?
  - c. Does section 24(3)(b) (information revealing personal information about another individual) apply to any of the withheld information?
  - d. Does section 24(3)(c) (information revealing identity of a person who provided opinion in confidence) apply to any of the withheld information?
3. If the withheld information contains or consists of personal information of the Applicant, and if section 24(2)(b), 24(3)(a), 24(3)(b) or 24(3)(c) applies to this information, is the Organization reasonably able to sever the information to which these sections apply, and provide the remaining personal information of the Applicant, as required by section 24(4)?

### III. DISCUSSION OF ISSUES

#### 1. Did the Organization refuse to provide the Applicant access to his personal information that was in its custody or control?

[para 5] Section 24(1)(a) authorizes an individual to request access to their personal information from an organization; section 24(1.1) sets out the organization's duty in response. These provisions state:

*24(1) An individual may, in accordance with section 26, request an organization*

- (a) to provide the individual with access to personal information about the individual, or*
- (b) to provide the individual with information about the use or disclosure of personal information about the individual.*

*(1.1) Subject to subsections (2) to (4), on the request of an applicant made under subsection (1)(a) and taking into consideration what is reasonable, an organization must provide the applicant with access to the applicant's personal information where that information is contained in a record that is in the custody or under the control of the organization.*

[para 6] The Organization described the video as containing the Applicant's personal information, as well as that of other individuals. It states that the video "allegedly captured an assault on the Applicant by a third-party that occurred on May 18, 2016" (affidavit provided with initial submission, dated October 2, 2018). Therefore, the video presumably contains the Applicant's personal information.

[para 7] In the cover letter to its submission, the Organization states that it did not provide a copy of the video for the inquiry "as the record is not in the custody or control of the [Organization]." In its submission, it states that the video was provided to the Calgary Police Service (CPS) for a criminal investigation into the incident.

[para 8] The Organization provided a sworn affidavit from an employee of the Organization, whose responsibility is to conduct internal audits and investigations and assist with investigations by law enforcement. The affiant states that he confirmed with the CPS that it has a copy of the video; he also states that he confirmed with the 7-Eleven store, where the incident occurred, that it does not have its own copy of the video.

[para 9] The Applicant's access request is dated May 21, 2016 and the requested video is from May 18, 2016. The Organization has not told me when it provided the video to the CPS. Its submission states that the video "was not in the custody or control of the [Organization] at the time it received the Applicant's request for access" (submission at para. 4).

[para 10] Based on the affidavit evidence from the Organization, I accept that the Organization does not have custody of the video. Regarding whether it continues to have control over the video, past Orders of this Office have addressed the meaning of 'control' under the *Freedom of*

*Information and Protection of Privacy Act* (FOIP Act). In Order F2010-023, the adjudicator reviewed the cases discussing ‘control’ under the FOIP Act and concluded:

In section 6 of the FOIP Act, the word “custody” implies that a public body has some right or obligation to hold the information in its possession. “Control,” in the absence of custody, implies that a public body has a right to obtain or demand a record that is not in its immediate possession.

[para 11] This analysis applies equally well under PIPA, in determining when an organization has control of a record. In this case, if the Organization had the ability to obtain or demand the video from the CPS, the video would be in its control.

[para 12] As stated, the video was provided to the CPS as evidence for a criminal investigation. The Organization’s submissions indicate that it still does not have the video in its custody (although a significant period of time has passed since the incident).

[para 13] The Organization did not provide any arguments as to whether it has any control to obtain the video, or a copy of it, from the CPS. As the video was provided to the CPS as evidence for a criminal investigation, it seems highly unlikely that the Organization has such control. However, even if the Organization did have the requisite control over the video, I find that the video would be properly withheld for the reasons discussed below.

**1. If yes, did it do so in accordance with section 24(2) (discretionary grounds for refusal) or with section 24(3) (mandatory grounds for refusal)?**

[para 14] Although the Organization has stated that it does not have custody or control over the video, it has also argued that it was authorized to “deny the request” under several provisions in the Act. The Organization’s August 19, 2016 response to the Applicant states that the Organization applied sections 24(3)(a), (b) and (c). The Organization’s submission addressed the application of sections 24(3)(a) and (b) (as well as section 24(4)). For the reasons below, I find that section 24(3)(b) applies; therefore I will not consider sections 24(2)(c), 24(3)(a) or (c).

**Does section 24(3)(b) (information revealing personal information about another individual) apply to any of the requested information?**

[para 15] I do not have a copy of the video, nor has the Organization provided details of the incident captured on the video. However, based on the arguments cited below, I accept that the video contains personal information of third parties.

[para 16] In his request for review, the Applicant repeated that he was seeking access to the video “to legally pursue the individual involved” in the incident. It appears that the Applicant is seeking the video *because* it contains third party personal information.

[para 17] The video was provided to the CPS for a criminal investigation, which also indicates that the video contains personal information of more than just the Applicant.

[para 18] In its submission, the Organization characterizes the incident captured on the video as an “alleged altercation between the Applicant and a third party” (at para. 7).

[para 19] Section 24(3)(b) requires the Organization to refuse access to information about third party individuals. It states:

*24(3) An organization shall not provide access to personal information under subsection (1) if*

...

*(b) the information would reveal personal information about another individual;*

...

[para 20] Section 24(3)(b) is a mandatory provision; if it applies, there is no ability for the Organization to exercise discretion to provide that information to the Applicant.

[para 21] While the video appears not to be in the Organization's custody or control, if it were, section 24(3)(b) applies to the third party personal information (images) in the video; that information cannot be provided to the Applicant under PIPA.

- 2. If the withheld records contain or consist of personal information of the Applicant, and if section 24(2)(b), 24(3)(a), 24(3)(b) or 24(3)(c) applies to this information, is the Organization reasonably able to sever the information to which this section applies, and provide the personal information of the Applicant, as required by section 24(4)?**

[para 22] Section 24(4) states that if the third party personal information can reasonable be severed from the video, the Organization must provide access to the remainder:

*24(4) If an organization is reasonably able to sever the information referred to in subsection (2)(b) or (3)(a), (b) or (c) from a copy of the record that contains personal information about the applicant, the organization must provide the applicant with access to the part of the record containing the personal information after the information referred to in subsection (2)(b) or (3)(a), (b) or (c) has been severed.*

[para 23] I have accepted that the video contains third party personal information that cannot be provided to the Applicant. If the video were in the custody or control of the Organization, it would have to consider whether the third party personal information could be severed from the video, so that the remainder – the Applicant's own personal information – can be provided to him.

[para 24] In its submission, the Organization argued (at paras. 20-22, citations omitted):

In *Order P2011-006*, the Commissioner applied the reasonableness proviso to affirm a decision by a law firm not to release the personal information of an applicant contained in email messages:

... the Applicant is fully aware of the nature of his involvement in the matter that is the subject of the emails. In the context of the Applicant's access request under PIPA for his own personal information, what is revealed by implication in

the emails about his involvement in the matter would not reveal anything to him that does not already know, and thus would provide nothing meaningful to him. In view of this, it would not be reasonable to require the law firm to provide it. Section 24(1) of PIPA, both in its recently-amended and earlier versions, permits an organization to take into consideration what is reasonable in responding to an access request.

While it is conceded by the Respondent that the Record likely contains personal information of the Applicant, it is clear from the request that the Applicant is not interested in his own personal information. He is “fully aware of the nature of his involvement” and the disclosure of his information “would not reveal anything to him that he does not already know”.

The Respondent is entitled to take into consideration the reasonableness of the request pursuant to section 24(1.1). The Applicant has no right to the Record itself, only his personal information (e.g. his visage). This personal information alone, in isolation from the rest of the Record or the personal information of third parties “would provide nothing meaningful” to the Applicant in light of his request. On this basis, it was reasonable for the Respondent to decline the Applicant's access request.

[para 25] When the Organization states in the excerpt above, “in light of [the Applicant’s] request” it is referring to the fact that the Applicant specified that he is seeking the third party personal information in the video, and that he wants a copy of the video unaltered. Therefore, even if the video were in the Organization’s custody or control, and even if it could sever the third party personal information from the video, the Applicant has specified that he is not seeking the video without that third party personal information.

[para 26] Under different circumstances, severing third party personal information from a video in order to provide an applicant with their own personal information might not render the remaining information “meaningless.” However, given the Applicant’s request, I agree with the Organization that the Applicant is not seeking a severed version of the video. It would be unreasonable in this case to require the Organization to sever the third party personal information and provide the Applicant with only his own personal information in the video given that the Applicant specifically asked that this not be done.

[para 27] I find that the Organization would not have a duty to sever the third party personal information in the video, even if it had custody or control of the video, and capacity to sever the video.

[para 28] I note that the Organization provided the Applicant with the CPS file number for the investigation so that the Applicant could request the video from the CPS if he so chooses.

#### **IV. ORDER**

[para 29] I make this Order under section 52 of the Act.

[para 30] I find that section 24(3)(b) applies to the third party personal information in the video and it is not reasonable to require the Organization to sever this information.

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Amanda Swanek  
Adjudicator