



OFFICE OF THE  
INFORMATION & PRIVACY  
COMMISSIONER  
— for —  
British Columbia

Decision P07-01

**FINNING CANADA**

David Loukidelis, Information and Privacy Commissioner

June 4, 2007

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**Summary:** In 2004, X complained about Finning's collection of driver's licence records abstracts. As a result of investigation by this office, Finning changed its policy. X is not affected by Finning's actions, since none of his personal information in the form of an abstract has been collected, used or disclosed by Finning. X nonetheless sought to revive his old complaint in the public interest. In the circumstances, including in light of a previous arbitration award involving Finning, a relevant agreement between the X's union and the previous resolution of X's original complaint, no findings or order will be made, since X's own interests are not engaged under PIPA.

**Statutes Considered:** *Personal Information Protection Act.*

**Authorities Considered:** **Alberta:** *International Association of Machinists and Aerospace Workers Local Lodge 99 and Finning International, Arbitrator P. Smith Q.C. (December 6, 2004).*

## 1.0 INTRODUCTION

[1] An individual<sup>1</sup> employed by Finning Canada<sup>2</sup> ("Finning") as a heavy-duty equipment mechanic complained to this office in 2004, under the *Personal Information Protection Act* ("PIPA"), that Finning was not entitled to require him to produce an abstract of his driver's record ("abstract") as a condition of employment. He maintained that production of a valid British Columbia driver's licence should be sufficient.

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<sup>1</sup> I will refer throughout to this individual as "X".

<sup>2</sup> Finning Canada is a division of Finning International Inc.

[2] As a result of this office's investigation, in 2005 Finning changed its policy on collection of abstracts as a condition of employment and Finning's policy now reads, in relevant part, as follows:<sup>3</sup>

- Employees who are not "directly affected" employees, are not required to provide a driver's abstract or approval. They will be required to produce a valid driver's license on every occasion before operating a licensed motor vehicle for the purpose of the employer's business

**Directly affected employees include:**

- All hourly and salaried employees who are required, as part of their job or on occasion due to business demands (more than 10 times per year) to operate any licensed motor vehicle.
- Employees who operate Finning (Canada) marked and un-marked vehicles either as a regular part of their job (e.g. field mechanics) or from time to time (e.g. delivering parts, errands, etc. more than 10 times per year).

[3] The material before me indicates that Finning did not require X to produce his abstract. It also indicates that, at the time submissions were received in this matter, he was still employed by Finning and there is no indication that he has been personally affected by Finning's policy.

[4] After Finning had revised its policy and practices around collection of personal information in the form of driver's abstract information, X's lawyer wrote to "revive the complaint made on behalf of our client", whom the letter identified as the employee who made the original complaint:

In your letter of [March 16, 2005], the Commissioner took the position that ...[X's] complaint had been resolved, and if any new or prospective employee was concerned about the policy's continued application to their circumstances, you would await a complaint from them before proceeding to further steps.

Notwithstanding this advice, as a result of the Employer's apparent flouting of the resolution to ...[X's] previous complaint, whether or not this issue arises again in ...[X's] individual case, he wishes to obtain a final, binding resolution of this matter from your office from a public interest standpoint. Any fellow employee or prospective employee who is required to produce personal information in an unreasonable manner represents a potential threat to privacy rights in general. The more ...[X's] concerns about privacy are marginalized and his position appears not to be endorsed by others (who may share his concerns, but not his strength of conviction to register a formal complaint and uphold their privacy rights, as a result of fear of

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<sup>3</sup> The text of the relevant Finning policy in question is found in the affidavit of Ray Mazurak, Finning's Human Resources Manager.

reprisal or loss of employment opportunities) the more the Employer may continue to feel justified to ignore the spirit of this informal resolution and maintain its demands for intrusion into the realm of personal information, beyond what is reasonably required for management of the employment relationship.

[5] The letter went on to allege that Finning “is not respecting the revised policy that was promulgated in response to your [the OIPC] process last year”. The letter enclosed copies of 38 job postings that Finning had published after its policy change and alleged that these postings “do not appear to conform with the [Finning] policy, or, in our view, with PIPA”.<sup>4</sup>

[6] This office opened a new file in response, on what basis is not clear, and the matter proceeded to a hearing under PIPA.

## 2.0 ISSUE

[7] The notice of written inquiry that this office issued set out the following issues for determination:

1. Whether the information collected by the organization under its driver abstract policy is “employee personal information” as defined under PIPA.
2. Whether the organization is entitled, under sections 13 and 16 of PIPA, to apply its driver abstract policy to collect and use the information in employees’ driver abstracts without the consent of the affected employees.
3. Whether the organization is requiring, through its recent job postings, the production of employees’ driver abstracts in circumstances inconsistent with its own driver abstract policy and whether the collection and use is contrary to PIPA ss. 6(1), 13 or 16.

[8] The notice indicated that s. 51 of PIPA is silent respecting the burden of proof on the above issues and indicated that each party should provide information and submit arguments that justify its position on the issues.

## 3.0 DISCUSSION

[9] **3.1 No Live Dispute**—For reasons given below, I decline in the particular circumstances to make any findings or orders respecting the issues presented in the notice of written inquiry.

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<sup>4</sup> X had asked Finning to return abstracts to employees that had been collected under Finning’s old policy and, as indicated by X’s initial submission in this matter, Finning said it would return those abstracts. X therefore did not advance this aspect of the revived complaint. See X’s initial submission, para. 36.

[10] X is not affected by Finning's revised policy on abstracts.<sup>5</sup> The material before me shows that his complaint was investigated and disposed of by this office some two years ago. This office's March 16, 2005 letter to X's lawyer said this:

It is our understanding that your client does not normally operate a licensed vehicle for the purpose of the employer's business. If that is the case, under the new policy he will not be required to produce a driver's abstract. On the rare occasions that he is required to operate a licensed vehicle, he will be required to produce a valid driver's license.

As this is the result your client was seeking when you complained to this office on his behalf, we consider the complaint to be resolved and are closing our investigation file. I am notifying Finning of the results of this investigation by copy of this letter.

Your concerns about new employees being required to produce a driver's abstract are another matter. If any of those employees share your concern, they should first attempt to resolve their concerns with their employer or trade union. If their concerns about the use of their personal information remain unresolved, they may then complain to this office.

[11] According to X's initial submission, at the time of the 2004 complaint, his union local in British Columbia had filed a grievance about Finning's driver's licence abstract policy. This grievance was resolved through an "interim letter of agreement" under the collective agreement between the union and Finning. X told his union and Finning that, in his view, the interim agreement solution did not accord with PIPA.<sup>6</sup>

[12] X's initial submission here says the issue at hand was the subject of a union grievance against Finning in Alberta, which resulted in an award by a labour arbitrator.<sup>7</sup> In that decision, Arbitrator P. Smith Q.C. held that Finning's old policy of requiring abstracts from all employees in the bargaining unit, except lab technicians, violated employee privacy. I note in passing, however, that the union conceded, and the arbitrator found, that it was reasonable for Finning to require abstracts for some employees.

[13] X says the Alberta award "suggested" the interim letter of agreement was "over broad", but the British Columbia local declined to change tack and pursue the matter to arbitration despite the interim agreement. He says this prompted him to pursue the matter under PIPA.

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<sup>5</sup> Finning's initial submission, para. 4.

<sup>6</sup> X's initial submission, para. 14.

<sup>7</sup> *International Association of Machinists and Aerospace Workers Local Lodge 99 and Finning International*, Arbitrator P. Smith Q.C. (December 6, 2004).

[14] X claims no personal interest in the matter—he does not say that Finning has collected, used, disclosed or retained his personal information contrary to PIPA. He acknowledges that his complaint was disposed of in 2005 and does not dispute that his complaint caused a change of policy on Finning’s part.<sup>8</sup> He says that he is now seeking what he describes as a “final, binding resolution of the matter from a public interest stand point.”<sup>9</sup>

[15] In the circumstances, I am not prepared to proceed further with this matter.

[16] First, I note that the issue of Finning’s policy on abstracts was the subject of an interim letter of agreement in British Columbia, with which X apparently disagreed. He has sought to use PIPA to advance his view of the matter.

[17] Second, the issue was the subject of the Alberta arbitration award discussed above. It appears that this award was, in addition to this office’s resolution of the complaint, a factor in Finning’s adoption of a new policy, which satisfied this office. X seeks to use PIPA to advance his view of the matter despite the interim letter of agreement in British Columbia, the Alberta award and the resolution of his PIPA complaint.

[18] Third, Finning argues, as I understand it, that the thousands of job postings that it issues, each of which is fact-specific, cannot properly be addressed in this particular proceeding.

[19] Absent any live dispute between X and Finning as regards X’s own personal information—or any other individual’s interests—I decline to invest the resources of this office in pursuing X’s desire for what he styles as a public interest disposition of issues.<sup>10</sup> This is the most important of the factors just mentioned in my decision not to proceed further in this matter.

[20] X complained to this office and his complaint was resolved by a change in Finning’s overall policy on collection, use and disclosure of personal information in the form of driver’s licence abstracts. X is not affected by the present Finning policy or practice and that is the end of it in this case. This does not mean, as X contends, that organizations will be able to avoid adjudication of issues under

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<sup>8</sup> X complains in his submissions here that his original complaint was investigated and resolved “*ex parte*”, *i.e.*, without his involvement. No judicial review proceedings have to my knowledge been taken respecting X’s allegation that his complaint was investigated and resolved *ex parte* and I need not deal with that allegation here.

<sup>9</sup> X’s initial submission, para. 24. There is no indication in the materials before me that the union local, or any Finning employees other than X, have complained to this office about Finning’s policy or practices. Finning says, at para. 5 of its initial submission, that it is not aware of any employee or job applicant who has refused to provide an abstract or who has complained to this office.

<sup>10</sup> In doing this, I acknowledge Finning’s arguments about public interest standing and personal standing.

PIPA by exempting a particular complainant from a collection, use or disclosure of personal information about which X has made a PIPA complaint.

#### **4.0 CONCLUSION**

[21] For the above reasons, I decline to complete this inquiry or to make any order in this matter.

June 4, 2007

#### **ORIGINAL SIGNED BY**

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David Loukidelis  
Information and Privacy Commissioner  
for British Columbia

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