



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

Order P06-04

TWENTIETH CENTURY FOX FILM CORPORATION

David Loukidelis, Information and Privacy Commissioner
October 26, 2006

Quicklaw Cite: [2006] B.C.I.P.C.D. No. 35
Document URL: <http://www.oipc.bc.ca/orders/OrderP06-04.pdf>
Office URL: <http://www.oipc.bc.ca>
ISSN 1198-6182

Summary: Personal information collected by Fox to establish an employee's residency in British Columbia, in order to substantiate Fox's claims for film production tax credits, is "employee personal information" and Fox's collection, use and disclosure of it for that purpose complies with PIPA. PIPA requires an organization to provide information about its privacy policies on request, but it does not require the organization to provide a copy of its entire policy to whomever asks. Fox's security arrangements for the employee personal information are reasonable.

Key Words: employee personal information—establishing, managing or terminating an employment relationship—reasonable security.

Statutes Considered: **B.C.:** *Personal Information Protection Act*, ss. 5(a), 6, 7, 8, 9(3), 13, 16, 19 and 34.

Authorities Considered: **B.C.:** Order P05-01, [2005] B.C.I.P.C.D. No. 18; Investigation Report F06-01, [2006] B.C.I.P.C.D. No. 7. **Alta.:** Investigation Report P2006-IR-002, [2006] A.I.P.C.D. No. 6; Order P2005-001, [2006] A.I.P.C.D. No. 19; Investigation Report P2006-IR-004, [2006] A.I.P.C.D. No. 47. **Federal:** PIPEDA Case Summary 217; PIPEDA Case Summary 280; PIPEDA Case Summary 333; PIPEDA Case Summary 334.

Cases Considered: *R. v. Clark*, [2005] 1 S.C.R. 6, [2005] S.C.J. No. 4.

1.0 INTRODUCTION

[1] In October of 2004, the complainant,¹ who works in the film industry, wrote to Fantastic Four Ltd., a British Columbia company incorporated by Twentieth Century Fox Film Corporation (“Fox”) to produce a film by the same name, and expressed concerns about requirements for film crew applicants to provide personal information to prove residency in British Columbia during the year immediately before filming. The complainant also asked for a copy of the organization’s written privacy policy, which Fantastic Four did not provide. Instead, a Fox representative verbally summarized the policy. Fantastic Four was dissolved by Fox after the film was completed and film tax credits claimed for the film were approved.²

[2] The complainant complained to this Office, alleging various breaches of the *Personal Information Protection Act* (“PIPA”) and that requiring proof of British Columbia residency as a condition of employment violates mobility rights guaranteed by the *Canadian Charter of Rights and Freedoms*. Because the complaint was not resolved through mediation, the matter proceeded to inquiry under Part 11 of PIPA.

[3] The Union of BC Performers (“Union”), the Canada Revenue Agency (“CRA”), the provincial Ministry of Small Business and Revenue (“Ministry”), and the British Columbia Film Commission (“Film Commission”) participated in this inquiry as interveners.

2.0 ISSUES

[4] The issues set out in the notice of inquiry that this office issued are as follows:

1. Do Fox’s practices for the collection of personal information from individuals who apply to be employed as film crew members in British Columbia comply with the requirements of ss. 6, 7, 8 and 9(3) of PIPA?
2. Does s. 5(a)³ of PIPA require Fox to make a written privacy policy publicly available?, and

¹ Deferring to the complainant’s concern about being identified even indirectly because of the complainant’s fear that there will be adverse consequences for employment in the film industry, I will refer only to “the complainant” without using the second person singular, which would identify the complainant’s sex. This causes some stylistic awkwardness but is necessary in this case.

² The notice of inquiry issued by this Office named Fox as the respondent organization. Fox’s initial submission named the “Canadian affiliates of Fox Film Corporation”, referred throughout as “Fox”, as the respondent. Fox’s affidavit evidence, in the form of the affidavit of Carol Celentano, specifically named Fox Film Corporation as the organization involved. I will in this light refer to Fantastic Four, the Fox corporate affiliate involved in collecting the complainant’s personal information, as Fox and treat Fantastic Four and Fox as one and the same.

³ The relevant section of PIPA is s. 5(c).

3. Are the security arrangements employed by Fox respecting personal information sufficient to satisfy the requirements of s. 34 of PIPA?

[5] My deliberations prompted me to seek further submissions on the following questions:

1. Is personal information provided to Fox to establish the residency of the individual who provides the information, for the purpose of enabling Fox to claim tax credits as described in the submissions to date, “employee personal information” within the meaning of PIPA’s definition of that term?
2. Does the answer to the above turn on whether or not an organization in Fox’s position requires the personal information to be provided as a condition of considering an application for employment and extending an offer of employment?
3. If personal information described in paragraph 1 is “employee personal information”, does the collection, use and disclosure of that information by Fox comply with ss. 13, 16 and 19, respectively, of PIPA?

[6] Fox and the complainant each made submissions in response to these questions, but the interveners did not.⁴

[7] As was foreshadowed by the questions on which I sought submissions, I will analyze this case as one involving “employee personal information” and ss. 13, 16 and 19 of PIPA, not ss. 6, 7, 8 and 9(3).

[8] I decline to consider issues raised in the complainant’s submissions respecting the *Canadian Charter of Rights and Freedoms* and the constitutional validity of the tax credit programs and activities associated with them. I will confine myself to the privacy compliance issues that arise under PIPA.

3.0 DISCUSSION

[9] **3.1 Background**—Tax credits are available to film production corporations for remuneration they pay to Canadian residents working on television and feature films produced in British Columbia. Tax credits are available through the provincial Film and Television Tax Credit and Production Services Tax Credit programs, the statutory authority for which is British Columbia’s *Income Tax Act*. (I will refer to these two programs collectively as the “BC Programs”.)

⁴ The complainant objected to a two-week extension given to Fox to make its submission in response to my questions. Fox had not done so by the requested date because, it was discovered, its previous counsel had not forwarded my letter seeking submissions. The two-week extension, which has not affected the complainant’s ability to make representations in the inquiry, was appropriate.

[10] Tax credits are also available through the federal Film or Video Production Services Tax Credit program (“Federal Program”), the statutory foundation for which is the *Income Tax Act* of Canada. Only compensation paid to Canadian residents is eligible for credit under the Federal Program.

[11] The BC Programs are administered on the Ministry’s behalf by the Canada Revenue Agency (“CRA”), the federal government agency responsible for assessment and collection of federal income taxes. The CRA also administers the Federal Program.

[12] A corporation claiming a credit under either the BC Programs or the Federal Program must record on the relevant forms the amounts of salary, wages or other remuneration paid to, or with regard to services rendered by, individuals who meet the residency requirements under the program.⁵ As the CRA’s submission indicates, the forms used to claim one or the other of the credits require that an authorized officer of the film production corporation claiming the credit must sign the form to certify that the information in the form is to the best of her or his knowledge correct and complete.⁶

[13] To obtain tax credits for remuneration paid to individuals, the production corporation must establish that its labour costs are eligible for credit. For the BC Programs, the Ministry says, the corporation “must be satisfied, prior to hiring an individual, that the individual is a BC-based individual.”⁷ To do this, the corporation “asks for proof of BC residency in the year prior to the year that principal photography of the production began.”⁸

[14] The Ministry also says that the “proof of residency information requested in this case is necessary for the organization to ensure its eligibility for BC film tax credits.”⁹ The Ministry acknowledges that “various documents are acceptable proof to substantiate that an individual is a BC resident”, but it says the “most reliable source document” is a copy of the individual’s Notice of Assessment (“NOA”) issued by the CRA for income taxation purposes.¹⁰ A combination of documents other than a NOA can be used to establish residency, including British Columbia government-issued picture identification, provincial Medical Services Plan care card, BC driver’s licence and Insurance Corporation of British Columbia (“ICBC”) vehicle insurance papers.¹¹

⁵ Credits are available for remuneration paid to certain corporations, but I need not describe those aspects of the credits.

⁶ Para. 8, CRA submission. The CRA’s submission included copies of the CRA forms used to claim tax credits under the BC Programs (form T1197 E (05)) and the Federal Program (form T1177 E (05/03)). Both forms contain a certification that the information provided on the form and any attached documents is “to the best of my knowledge, correct and complete.”

⁷ Ministry initial submission, para. 9. It is not clear on what basis the Ministry says a production corporation must be satisfied about an individual’s residency *before* hiring.

⁸ Ministry initial submission, para. 9.

⁹ Para. 23, Ministry submission.

¹⁰ Ministry submission, paras. 10 and 11.

¹¹ Para 11, Ministry submission.

[15] When a film tax credit claim is filed, “a review is undertaken to verify that the BC labour expenditures claimed represent payments made to BC-based individuals” and, if the claimant corporation “does not have adequate supporting documents to determine an individual’s residency” and the auditor is not able to establish residency through other means, labour expenditures related to the individual is denied and the tax credit is reduced accordingly.¹²

[16] The “Declaration of British Columbia Residency” issued by Film Incentive BC contains the following passage:

...

5. I confirm that I will provide satisfactory documentary proof of the matters referred to in paragraphs 1, 2, 3 and 4 above [which relate to Canadian and British Columbia residency] to the certifying authority, British Columbia Film and the Canada Customs and Revenue Agency upon written request.
6. I understand that the Production Corporation will be relying on this declaration for its tax credit application pursuant to Part 5 of the *Income Tax Act* (British Columbia), which may be subject to a Canada Customs and Revenue Agency audit, and hereby warrant that the above-noted information is true and accurate to the best of my knowledge and belief.¹³

[17] The document includes a warning that “false or misleading information will result in automatic denial of the tax incentives, and may lead to prosecution under the *Income Tax Act* (British Columbia)” and also notes that the Ministry is the responsible agency.

[18] The CRA says those who claim tax credits “must be in a position to certify that the amounts they are claiming were indeed paid to, or for services rendered for the production by, individuals that meet the appropriate residency requirements.”¹⁴ Because it recognizes that establishing someone’s residency “can be relatively complex”, the CRA published Interpretation Bulletin IT-221R3, *Determination of an Individual’s Residence Status*.¹⁵ The CRA says it does not stipulate the precise forms of proof that production corporations should obtain to prove residency of the individuals they engage for productions. Corporations must, however, take steps necessary to ensure they comply with program requirements, which “cannot be done unless corporations require that individuals involved in productions substantiate their residency status.”¹⁶

[19] CRA audits of tax credit eligibility occur after production has been completed and the production-specific corporation has ceased to employ the cast

¹² Paras. 16 and 23, Ministry submission.

¹³ A copy of this document formed part of the complainant’s initial submission.

¹⁴ CRA initial submission, para. 8.

¹⁵ CRA submission, para. 9.

¹⁶ CRA submission, para. 9.

and crew used for the production. According to Carol Celentano's evidence, this makes it "extremely difficult, if not impossible, to locate those cast or crew members" to then seek residency information for CRA audit purposes, the result being that "Fox must collect the residency information of the cast and crew prior to the audit."¹⁷ Celentano deposes, moreover, that the CRA has actually told Fox that it must collect residency information for every Canadian involved and has, specifically, required Fox to collect copies of each individual's NOA or specified alternative documentation:

7. Fox has been advised by CRA that it requires an individual's Notice of Assessment for the year prior to the date of principal photography in order to prove residency. The individual's financial information on the Notice Assessment is not required by Fox or CRA and Fox requests that such information is removed. CRA has also advised that in cases where the Notice of Assessment is unavailable, Fox may collect at least three of the following pieces of secondary information from the individual:

- (a) A copy of the individual's B.C. Medical Services Plan Premium billing statement at December 31 for the year prior to the date of principal photography;
- (b) A copy of a billing statement from a utility company;
- (c) A copy of a statement for property tax or municipal tax, or a copy of a residential lease; and
- (d) A copy of a valid BC drivers license or provincial identification card.

8. Fox's purpose for collecting the above information is to confirm the individual's place of residence for the purposes of the CRA audit with respect to Fox's eligibility for the PSTC on compensation paid. CRA has advised that Fox should retain this personal information from its cast and crew members so that it may be available for review by CRA during the audit.

[20] The Union told its members the same thing about CRA requirements in an August 5, 2004 "Notice to All Performers Engaged For Fox Productions" ("Union Notice"):¹⁸

As you are no doubt aware, Twentieth Century Fox Film has implemented a procedure regarding proof of Canadian (and B.C.) residency in order to qualify for federal and provincial tax credits. The policy is at the behest of the Canadian Revenue Agency and is consistent with their policies. In order to prove the residency of the crew and performers engaged on the production CRA is requiring specific documentation.

For definitive proof of residency CRA requires a copy of an individuals [*sic*] Income Tax Notice of Assessment. Please note – **the financial information on the notice of assessment is NOT required and may be**

¹⁷ Celentano affidavit, para 6.

¹⁸ A copy of this document is included in material the complainant submitted.

blacked out. They are interested only in the Tax Centre, the name and SIN, the date of the Notice and the mailing address (including province).

If a Notice of Assessment is not available, other documentation may be provided. [original bold text]

[21] When cast and crew are hired for a Fox production, the hiring documents include a Declaration of Personal Residency form (“Residency Declaration”), which asks for residency-related personal information. The form also says that Fox will rely on the information that individuals provide to apply for federal and provincial tax credits:

I understand that Fox will rely on this declaration for its application for the Federal and Provincial Tax Credits which may be subject to government audit. Accordingly I hereby represent and warrant that the above information is true and correct, and at any time (including after my services have been completed) should CRA require additional information with respect to proof of my residence, I agree to cooperate with Fox in a timely manner and provide such requested information.¹⁹

[22] Another Fox form, the Notice to Performers (“Notice to Performers”), accompanies this. It says that Fox’s purpose for collecting residency information is to qualify for federal and provincial tax credits and it includes this statement:

As your privacy is extremely important to us, Fox has consulted with Canadian counsel to confirm that Fox’s request for and maintenance of such documents is in accordance with the new Canadian [*sic*] privacy legislation, the Personal Information Protection Act. In order to best maintain the privacy of all our employees, the Production Accountant will keep the residency documents in a secure and locked facility, and only those production personnel on a need-to-know basis will be allowed access. Further, other than the authorized personnel of Fox, the Canadian government and/or the outside vendor engaged to perform the requisite audit, Fox will not disclose at any time to the public, the media or to any person or entity, any information contained in the residency documentation. The information will be retained for as long as it is reasonably necessary and only for the purposes of determining the PSTC and proving the required residency. Thereafter the residency documents will be destroyed.²⁰

[23] In the complainant’s view, the Notice to Performers²¹ contains “degrading” and “more intrusive” demands for personal information, and there is clearly an element of scepticism in the complainant’s submission about whether or not the

¹⁹ Exhibit “A”, Celentano affidavit.

²⁰ Exhibit “B”, Celentano affidavit.

²¹ The complainant refers to the Notice to Performers, but this document does not specify particular documentation. It outlines the information requirement, but the Residency Declaration is the document that specifies the required documents.

CRA actually requires this information to be collected.²² Yet the complainant also says the justification for Fox's requirements was that the CRA had

...denied a high 6 figure amount of tax credits to a previous 20th Century Fox production, and that CRA informed Fox that 'better proof' of residency would insure [*sic*] that they would get the tax credits in the future. CRA gave Fox 'suggestions' as to what form this 'better proof' might take, and hence the...[Notice to Performers]."²³

[24] The complainant also says this about documentation to prove residency:

3. Production corporations are informed that CRA may require them to prove the residency status of their labor to get those tax credits, and CRA has given 'suggestions' as to what form that proof might take. Both Residency Declaration contracts and Start Package contracts embody those 'suggestions', and one or the other contract is given to each film laborer along with their standard work contract. Film labor includes performers, crew and technicians, teamsters, production office staff, etc. – all labor on productions.²⁴

[25] Fox says it allows employees to delete any financial information from the NOA if that is what they submit to prove their residency—"Employees may first delete any financial information contained in the documentation".²⁵ In her affidavit, Carol Celentano says "Fox requests that such information be removed" from the NOA.²⁶

[26] The production accountant is responsible for collecting residency information. Once a film production is completed, the files for that production are sent to Los Angeles, where they are held "under lock and key" in Fox's accounting department, "with limited access only by authorized Fox personnel."²⁷ Once a CRA audit has taken place, Fox shreds all documents containing the personal information of Canadians employed on Fox productions.²⁸ Fox says that it does not disclose any individual's personal residency information to anyone at any time other than to "authorized personnel of Fox, the Canadian federal and provincial tax authorities and the preparers of Fox's federal and provincial tax returns on an as-needed basis".²⁹

²² Para. 5, complainant's initial submission, for example.

²³ Para. 6, complainant's initial submission.

²⁴ Para. 3, complainant's initial submission.

²⁵ Initial submission, para. 12.

²⁶ Celentano affidavit, para. 7. At para. 5 of its supplemental submission, Fox says it "requires" that the individual "block out all of the personal tax information" on the NOA before submitting it. Nothing turns on whether Fox requires or simply allows individuals to block out their personal financial or tax information from the NOA. I accept that Fox does not seek to collect this information and, at the least, brings to individuals' attention that they need not submit such information. I return to this below.

²⁷ Celentano affidavit, para. 13.

²⁸ Celentano affidavit, para. 17.

²⁹ Celentano affidavit, para. 15.

[27] The complainant's submissions in this inquiry are detailed, thorough and thoughtful. The complainant says that collection and use of this personal information is excessive and that no one should have to turn this information over. Put another way, the complainant objects to the nature and amount of personal information being collected and believes that no one should be forced to consent to this. The complainant's central perspective on the overall situation is I think fairly captured by the following excerpts from the complainant's initial submission:

...

16. In order to properly address [Fantastic Four's] actions, I must first preface this with my contention that the main problem is that the government's 'film tax credit incentive program' ignores and degrades the 'right of individuals to protect their personal information'. To treat individual's private, personal information like a commodity to be taken and used in exchange for monetary gain (tax credits) to a production corporation, is to not only disregard that 'right', but to place the value of people and their personal information below that of money, and amounts to usury, not 'the need of organizations', nor 'appropriate in the circumstances'. That production corporations (they all do, not just F.F.) are willing to follow the government's carrot into this program and be the conduit of this usury reveals that economic interests to them, are of more concern, if any, than human rights. This betrayal of the human spirit by all participants is, to this reasonable person, repulsive. I do not believe that this supports the spirit and purpose of PIPA.

...

21. It is my perception that the government, with its 'film tax credit incentive program', ignores the fact that they cannot realistically expect 'responsibility' and 'security of personal information' collected by production corporations, due to many uncontrollable variables, and so this breaches a number of sections of the Personal Information Protection Act...

22. I contend that there are too many people's hands [*sic*] that film labor's personal information passes through, and that there are too many temporary and uncontrollable variables, for any production corporation to be able to assure anyone that personal information will be 'responsibly under their control', and so it is therefore unrealistic for our government to implement a 'film tax credit incentive program' that involves the collection of personal information, when, due to a number of variables, productions cannot accomplish compliance with some of the regulations in the Personal Information Protection Act. Foreign production corporations that come to Canada are told what they have to do to get the tax credits, one thing being that they have to have a privacy policy that conforms to PIPA, and so they come up with one. But there is no guarantee that it is read, properly understood, or even properly followed by everyone who may come in contact with contracts containing personal information. In the case of

performers only, that includes background Wranglers, various ADs (Assistant Directors), production office staff, an outside payroll company, various teamsters who will drive these contracts to and from these various people and places, etc.

...

41. Film labor have therefore, since 1998, been put in a position of:

Hand over the personal information or don't work (or continue to lose more work opportunities).

42. This is molestation. Some performers and other film labor have invested a significant portion of their lifetimes in this industry. It is abusive to introduce to them the above degrading violating hoop to jump through or else withhold, damage or destroy their career and livelihood. ... This 'film tax credit incentive program' has been doing ongoing, daily harm to me and others.

[28] The complainant's reply submission contains similar arguments.³⁰

[29] **3.2 Is Residency Information “Employee Personal Information”?**—

As indicated earlier, I sought further submissions about whether this case involves collection, use and disclosure of “employee personal information” under ss. 13, 16 and 19 of PIPA. This was because there were indications in the evidence that Fox requires individuals employed on Fox productions to provide personal information to establish residency.

[30] Fox's main argument in response is that residency-related personal information is not “employee personal information” because it is “not collected, used and disclosed in order to establish and manage the person's employment relationship with Fox.”³¹ It is, rather, “related to Fox's entitlement to PSTC and not related to the individual's employment.”³² Fox says the information is collected “after the engagement of the individual”, so Fox will have evidence of residency for the purposes of CRA audits after filming is completed.³³ It submits that the “start paper work”, as Fox describes it, is completed by a member of the cast or crew only after Fox has “engaged” them.³⁴ Fox says, in the alternative, that, if this is “employee personal information” within the meaning of PIPA, it is authorized to collect and use it for the purpose of “maintenance of the employment relationship with the individual.”³⁵

³⁰ At, for example, paras. 13-15.

³¹ Paras. 2 and 6, Fox's supplementary submission.

³² Para. 6, Fox's supplementary submission.

³³ Para. 3, Fox's supplementary submission.

³⁴ Para. 5, Fox's supplementary submission. The “start paper work” includes a contract (a so-called “deal memo”) if the individual is a member of the film crew, a Union of BC Performers contract if the individual is an actor, payroll initial paperwork and the Personal Declaration of Residency form.

³⁵ Paras. 7 and 14, Fox's supplementary submission.

[31] Regarding the second question, Fox says that determining whether or not residency information is “employee personal information” does not turn on whether Fox requires that information to be provided as a condition of considering an application for employment and extending an employment offer.³⁶ This is because Fox seeks personal information from individuals about their residency for tax-credit purposes only “after they have been employed by Fox”, with provision of that information not being a condition of considering an application for employment or of extending an offer of employment. In support of this position, it argues that most people employed in a film production obtain their position either through a union or a guild, which is responsible for dispatching available and qualified members for employment, without any application or interview process being conducted by Fox.³⁷

[32] The complainant contends that residency information “goes well beyond what is required to establish, manage, or terminate an employment relationship with an individual”, and has nothing to do with their ability to perform their job functions.³⁸ The complainant also says that the “general call” put out by Fantastic Four advised that, in order to be considered for employment, individuals must bring their previous year’s NOA or other proof of residency.³⁹

[33] The June 23, 2004 “Interoffice Memo” from Carol Celentano addressed to “All ‘Fantastic Four’ personnel” (“Celentano Memo”) includes this:

The Notice of Assessment is the only definitive proof of residency accepted by the Canada Revenue Agency. Please note that the amount of taxable income and tax may be edited out. If you do not have a Notice of Assessment, the Canada Revenue Agency has agreed to review other documentation; however, the residency determination based on such documentation is at the discretion of the Canadian taxing authorities’ auditor. Therefore the Production Accountant is required to collect all of the secondary documentation listed on the Declaration of Personal Residency form.

Fox requires as a condition of employment that each Canadian must sign a Declaration of Personal Residency form and attach the required documents proving their residency. This information is necessary to establish and maintain the employment relationship. If the Declaration of

³⁶ Para. 8, Fox’s supplementary submission. At para. 13 of the complainant’s initial submission, the complainant says that, in one telephone conversation with a Fantastic Four representative, the complainant was told that the information about residency was not a condition of employment, but in another telephone conversation with the same person, the complainant was told that provision of the information was a condition of employment.

³⁷ Para. 12, Fox’s supplementary submission. Fox acknowledges, however, that actors are hired on the basis of auditions, with the director or producer making the decision in relation to each production. It says, however, that the decision to hire an actor is nonetheless not based on their providing personal information about residency.

³⁸ Para. 25, complainant’s supplementary submission.

³⁹ Para. 29, complainant’s supplementary submission. The complainant refers to the Union Notice in support of this contention, apparently believing that Fox issued it. The Union Notice was, as indicated earlier, in fact issued by the Union, not Fox. The Union Notice does not say that proof of residency must be provided before an individual will be considered for employment.

Personal Residency form and requisite documents are not returned to the Production Accountant within the first 5 days of employment, Fox will be forced to terminate your services.

Please be advised that Fox's request for and maintenance of such documents is in accordance with the new British Columbia privacy legislation, the Personal Information Protection Act that came into force in B.C. on January 1, 2004.

In addition, Fox has made reasonable security arrangements to safeguard the accuracy and access to the residency documents, and only those production personnel on a need-to-know basis will be allowed access. Further, other than the authorized personnel of Fox, the Canadian government and/or the outside vendor engaged to perform the requisite audit, Fox agrees not [to] disclose at any time to the public, the media or to any person or entity, any information contained in the residency documentation. The information will be retained for as long as it is reasonably necessary and only for the purposes of determining the PSTC and proving the required residency.⁴⁰ [italics added]

[34] The June 23, 2004 memorandum from Fantastic Four to "All Employees" from "Accounting Department" referred to the "new document requirements" from the CRA "for information from new employees."⁴¹ The memo, which was part of the "start package" for employees, was accompanied by the Residency Declaration. The memo closed by saying, "It is imperative that we are all under the same understanding that this information is a vital part of employment."

[35] The content of documents entered in evidence in this inquiry—including Fox's own documentation—is somewhat at odds with the primary argument by Fox's lawyer that the residency information is not employee personal information.⁴² Fox has argued in the alternative, however, that residency information is employee personal information.

[36] I will now consider whether PIPA authorizes Fox to collect, use and disclose this personal information as employee personal information.

⁴⁰ I see no difficulty in the fact that the Celentano Memorandum—which I noted earlier was dated June 23, 2004 and was sent to Fantastic Four employees—is similar, but not identical, to the undated memorandum that forms Exhibit "B" to Celentano's affidavit. There are differences between the two, with the undated version being in some respects more specific about Fox's privacy practices. At para. 11 of her affidavit, Carol Celentano deposed that the undated version is given to employees, but did not claim that this is the same version as Fantastic Four employees received. She said cast and crew "are" given this memorandum. It may be that the undated version, which appears to have an October 13, 2005 document date in its footer, is a newer version that is now in use. Again, nothing turns on this difference.

⁴¹ A copy of this memorandum formed part of the complainant's initial submission.

⁴² Fox's lawyer for the further submissions is not the same lawyer who made submissions for Fox on the issues set out in the notice of inquiry. The position that Fox now takes on whether employee personal information is involved is an argument through its lawyer, whereas Fox's original submissions, and other material entered in the inquiry, contain documentary and other evidence on the point.

[37] Section 1 of PIPA defines “employee personal information” as follows:

“**employee personal information**” means personal information about an individual that is collected, used or disclosed solely for the purposes reasonably required to establish, manage or terminate an employment relationship between the organization and that individual, but does not include personal information that is not about an individual's employment.

[38] To qualify as “employee personal information”:

1. The information must be “personal information”, *i.e.*, “information about an identifiable individual”,
2. The personal information must be collected, used or disclosed “for the purposes reasonably required” to establish, manage or terminate an employment relationship,
3. The personal information must be collected “solely” for those purposes, and
4. The personal information must not be “personal information that is not about an individual's employment”.

[39] Regarding the first element of the “employee personal information” definition, information about an individual's place of residency is undoubtedly “personal information” under PIPA.

[40] As for the second part of the definition, I am satisfied that Fox collected this information to manage or terminate an employment relationship. Fox's documents indicate that, at the very least, it views the provision of this information as a condition of maintaining an individual's employment.⁴³ Fox's own documents refer to this personal information as “a condition of employment” and describe the information as “necessary to establish and maintain the employment relationship”. Fox specifically said that it would be “forced to terminate” the services of anyone who did not provide the information within five days of hiring.⁴⁴ Fox also told would-be “new employees” that “[i]t is imperative that we are all under the same understanding that this information is a vital part of employment.”⁴⁵

⁴³ In general, employers should only collect personal information from job applicants that is relevant and necessary for the purpose of assessing their suitability for the position and to hire them. An employer should not, for example, collect social insurance numbers from all job applicants—only the applicant who is offered the job should be required to provide the number as a condition of hiring. In this case, there is some indication in the material at hand that the Union dispatches qualified individuals and Fox hires them. If this were so, one could argue that it would be acceptable for Fox to require copies of documents showing residency before hiring if Fox essentially takes all those who are dispatched by the Union. In this case, the evidence tends to suggest that Fox is content to obtain the residency documentation after hiring, but as a condition of continued employment.

⁴⁴ Celentano Memorandum.

⁴⁵ June 23, 2004 memorandum from Fox's Accounting Department to “All New Employees”.

[41] The Ministry points out that the *Income Tax Act* requires employees to provide certain information, including social insurance number, for payroll and taxation purposes.⁴⁶ It also notes that the federal *Immigration Act* stipulates that only Canadian citizens, permanent residents or individuals with a valid employment authorization can work in Canada. It sometimes happens, the Ministry says, that non-residents are hired to work in Canada on a film production and, in such cases, the employer must withhold taxes from the non-resident or be held accountable for any taxes that are not paid. This means the production corporation needs to determine whether it is hiring a resident or a non-resident.⁴⁷ The upshot, the Ministry says, is that collection of personal information relating to residency is “a normal requirement for any corporation conducting their regular payroll operations.”⁴⁸

[42] I consider that Fox’s purpose for collecting residency information is a purpose reasonably required to establish, manage or terminate the particular employment relationship between “the organization” (in light of its wish to claim tax credits) and “that individual” (who must reside in British Columbia in order for Fox to be able to establish an employment relationship that qualifies for tax credits). In this case, the organization clearly seeks to establish or maintain only employment relationships of a particular kind, *i.e.*, those which entitle it to seek tax benefits under provincial and federal legislation. This approach to the definition of “employee personal information” accounts for the nature of the particular employment relationship between the organization and the individual.

[43] Fox’s purpose in collecting this information is in one sense related to its business decision to avail itself of tax benefits. It is not collecting the personal information to comply with a specific, or explicit, statutory or other legal obligation or duty. It cannot, however, plausibly be suggested that the Legislature intended to restrict the words “reasonably required” to capture only situations where an organization is “required” by law—statute or otherwise—to collect, use or disclose personal information for employment purposes. Nor can it persuasively be argued that employee personal information is restricted to personal information that is inherently of a kind such that an employer must, practically, collect it for employment purposes.

[44] Again, Fox has decided to take advantage of certain benefits available under federal and provincial tax laws. It has a business purpose⁴⁹ for collecting,

⁴⁶ Para. 12, Ministry’s initial submission. The issue here, of course, is whether PIPA authorizes Fox to collect this personal information for other, tax-related, purposes and that is the issue on which I will focus. As regards the Ministry’s submission, I will also add that s. 28 of the *Employment Standards Act* requires employers to keep records of the name, date of birth, occupation, telephone number and residential address for each employee, as well as other information about the start date of employment, remuneration, vacation and certain other employment-related matters.

⁴⁷ Para. 15, Ministry’s initial submission.

⁴⁸ Para. 23, Ministry’s initial submission.

⁴⁹ In Investigation Report P2006-IR-002, Jill Clayton, a Senior Portfolio Officer in the Office of the Information and Privacy Commissioner of Alberta, said that personal information in a recording of

and a need to collect, personal information from employees to prove its entitlement to tax benefits to the CRA's auditors. When Fox requires individuals to provide personal information to establish their place of residency, that personal information is for a purpose reasonably required to maintain a qualifying employment relationship, *i.e.*, an employment relationship of a nature that qualifies Fox to claim tax benefits for remuneration paid to the employee.

[45] This interpretation of "employee personal information" gives effect to the actual language of the employee personal information definition, it fits the overall statutory scheme of PIPA and it is consistent with PIPA's stated legislative purpose:⁵⁰

Purpose

2 The purpose of this Act is to govern the collection, use and disclosure of personal information by organizations in a manner that recognizes both the right of individuals to protect their personal information and the need of organizations to collect, use or disclose personal information for purposes that a reasonable person would consider appropriate in the circumstances.

[46] This is not to say that an employer has free rein to assert that a purpose it cites for collecting, using or disclosing personal information is "reasonably" required to establish, manage or terminate an employment relationship. Section 4(1) provides that, in meeting its responsibilities under PIPA, an organization "must consider what a reasonable person would consider appropriate in the circumstances". More directly, PIPA's definition of employee personal information, by using the words "reasonably required", itself limits the purposes for which an employer may collect, use or disclose personal information in the employment relationship context.

[47] The circumstances of each case, which must be assessed objectively, will govern. Any number of considerations may be relevant in assessing whether an employer's purposes in collecting, disclosing and using personal information are "purposes reasonably required". These may include the nature of the employment relationship itself (as in this case) or factors such as statutory requirements or benefits that may be available to the employer.

[48] Third, to be employee personal information, the personal information must be collected, used or disclosed "solely" for the purposes reasonably required to

a telephone conversation was not "personal employee information" under Alberta's *Personal Information Protection Act*. At para. 40, she said that, because the employer did not have a "business purpose" for collecting the information, the "information cannot be said to have been collected 'solely for the purpose' of recruiting, managing, or terminating the employment relationship". The Alberta definition of "personal employee information" uses language different from that in the British Columbia definition of "employee personal information", but the similar approach in this Alberta investigation report is of assistance.

⁵⁰ This interpretive approach has repeatedly been approved by the Supreme Court of Canada. See, for example, *R. v. Clark*, [2005] 1 S.C.R. 6, [2005] S.C.J. No. 4.

establish, manage or terminate the employment relationship. An employer cannot have a collateral purpose for collecting, using or disclosing the personal information and still claim the personal information is “employee personal information”. For example, it is doubtful that an employer could claim that name and address information of individuals it hires is employee personal information when the organization collects it for the purpose of establishing the employment relationship and also for marketing products to employees. The marketing purpose taints the exercise and the employer must otherwise be on side with PIPA as regards its marketing use of the information.⁵¹

[49] Fourth, I have no doubt that this personal information is about the individuals’ employment by Fox in employment relationships that meet the tax credit eligibility rules, thus meeting the last part of the definition of “employee personal information”.

[50] For these reasons, I find that personal information collected, used and disclosed by Fox solely for the purposes of establishing and proving employees’ residency in British Columbia or elsewhere in Canada for the purposes of the BC Programs and the Federal Program is “employee personal information”.⁵²

[51] **3.3 Does Fox’s Collection, Use & Disclosure Comply With PIPA?—** I will now consider whether collection, use and disclosure of this employee personal information complies with PIPA’s provisions relating to collection, use and disclosure of such information.

[52] The evidence here establishes that the only information in which Fox was interested, and which it had any wish to collect, use or disclose, was documentary evidence to show residency for the year immediately preceding the filming of any particular production. Fox collects, uses and discloses personal information about residency “solely” for the purpose of establishing eligible residency of the individuals it employs and thus Fox’s entitlement to tax credits it claims under the BC Programs and the Federal Program.

[53] Against this, the essence of the complainant’s main concern is that the complainant’s “private documentation” should not be collected:

...Since my personal, private documentation has nothing to do with my ability to perform on any production, I do not think I should have to supply it in order to work as a performer. I also do not think that any production’s tax

⁵¹ The employer would, as regards the collateral purpose of marketing, have to give notice and get consent for that other collection and use.

⁵² As for Fox’s disclosure of residency information to CRA auditors, this is the very purpose for which it is collected. The upshot of my finding here, moreover, is that Fox is entitled to require its employees to consent to that disclosure. I note that, even without that consent, Fox’s disclosure of the information to CRA for audit purposes under the applicable statutes would be a disclosure “authorized or required by law” under s. 18(1)(o) of PIPA and thus permitted under s. 19(2)(a).

credit qualifications should be based on a performer's handing over private information.

Since performers and others are being asked for very personal, private documentation, that entitles us all to have our concerns about this answered prior to any agreement, if any, to submit it. ...⁵³

[54] The complainant says Fox collected an excessive amount of personal information in order to prove residency in British Columbia and Canada, while Fox says that the information it collects is reasonable in the circumstances. Fox characterizes the information that it collects as "simple, basic identifying information",⁵⁴ which it says is necessary for the purpose of proving residency in British Columbia.

[55] Sections 13(2)(b), 16(2)(b) and 19(2)(b) of PIPA authorize an organization to, respectively, collect, use and disclose "employee personal information" where it is "reasonable for the purposes of establishing, managing or terminating an employment relationship between the organization and the individual."⁵⁵ These reasonableness requirements reinforce the fact that an employer's practices in collecting, using and disclosing personal information for employment purposes must be objectively reasonable.

[56] The focus in the employee personal information definition is on whether the "purposes" for which personal information is collected, used or disclosed are "reasonably required" to establish, manage or terminate an employment relationship. In ss. 13(2)(b), 16(2)(b) and 19(2)(b), the focus is on whether the collection, use or disclosure of particular employee personal information is in the circumstances reasonable for the purposes of establishing, managing or terminating the employment relationship.

[57] Fox refers⁵⁶ to the summary of a finding under the federal *Personal Information and Protection of Electronic Documents Act* ("PIPEDA") by Assistant Commissioner of Canada Heather Black, PIPEDA Case Summary 217. The summary indicates that Assistant Commissioner Black found that collection of name and address information was reasonable under PIPEDA where

⁵³ This is how the complainant put it in an October 29, 2004 letter to Fantastic Four, a copy of which forms part of the complainant's initial submission.

⁵⁴ Para. 24, initial submission.

⁵⁵ Sections 13(2)(a), 16(2)(a) or 19(2)(a) are not relevant. Sections 13(3), 16(3) and 19(3) require an organization to give the individual notice of collection, use or disclosure, respectively, of the individual's employee personal information. Sub-section (4) provides that notice is not required where relevant PIPA provisions dispense with consent to collection, use or disclosure of the personal information, but this provision does not apply here. The sub-section (3) notice requirement is, I accept, satisfied through the Fox Notice and the Celentano Memo, which tell those seeking employment on a Fox production why it wishes to collect residency information. It is clear from Carol Celentano's evidence that Fox only collects, uses and discloses residency information for the purposes of CRA audits of tax credit eligibility and Fox gives notice of this to employees at the time the information is collected.

⁵⁶ Para. 30, organization's initial submission.

a telecommunications company collected that information to verify the identity of a customer or to confirm credit standing.⁵⁷

[58] I have already found that residency information is “employee personal information” under PIPA. Fox’s collection, use and disclosure of this information is in the circumstances “reasonable for the purposes” of establishing, managing or terminating the employment relationship. As explained earlier, the employment relationships between Fox and the individuals it employs on British Columbia productions are conditioned by Fox’s need to establish entitlement to tax credits it claims under the BC Programs and the Federal Program. It is reasonable for Fox to collect, use and disclose employee personal information that is reasonably necessary to establish an employee’s residency for the purposes of government audit of Fox’s claimed entitlements under those programs.

[59] In Order P05-01,⁵⁸ I concluded that a retailer could require individuals seeking to return goods for credit to identify themselves, and could record name, address and telephone number in its store computers, as part of its program to detect and deter fraudulent return of goods. I noted that one factor in arriving at this conclusion was that the organization did not ask for “an excessive amount of personal information”, limiting its requirements to “basic identifying information”.⁵⁹ I also expressed the preliminary view that it was “doubtful whether an organization could compulsorily collect or use personal information from identification such as a driver’s licence—specifically, the licence number—on the basis that the information is ‘necessary’ within the meaning of s. 7(2)” of PIPA, adding that it might well be enough for the organization to “examine the identification...and then record the fact that it was produced and examined to the organization’s satisfaction”.⁶⁰

[60] In this case, Fox collects information about residency by obtaining a copy of the individuals’ NOA or copies of other acceptable documents. Fox does not, therefore, simply record the fact that it has reviewed documentation as to residency and is therefore satisfied as to residency. A production corporation claiming tax credits is already required to certify, through an authorized individual, that the information contained in the claim is complete and accurate to the best of that person’s knowledge. If the CRA audits the claim, the organization must be in a position to satisfy the CRA that the organization’s claim is eligible, on the basis that the employees were eligible residents.⁶¹

⁵⁷ http://www.privcom.gc.ca/cf-dc/2003/cf-dc_030805_07_e.asp

⁵⁸ [2005] B.C.I.P.C.D. No. 18.

⁵⁹ Para. 93.

⁶⁰ Para. 94.

⁶¹ In Order P05-01, by contrast, there was no comparable external requirement or practical necessity. The retailer in that case had itself decided to implement a loss prevention program and was collecting personal information for its own use in that program. It was not required, either under any specifically applicable legal obligation or duty or practical necessity, to satisfy any third party as to the identity or residency of individuals whose personal identifying information it collected.

[61] In addition to PIPEDA Case Summary 217, on which Fox relies, I note that, in PIPEDA Case Summary 334, Assistant Commissioner Black rejected a complaint about a bank's policy of requiring customers seeking access to their own personal information to provide "a copy of a piece of valid identification, such as a driver's licence, birth certificate, passport or citizenship certificate."⁶² Assistant Commissioner Black found that it was reasonable to require the individual to identify himself before his request for access to his own personal information was processed. That case involved principle 4.9.2 of Schedule 1 to PIPEDA, which differs from the issue at hand, but PIPEDA Case Summary 334 is nonetheless of interest for its treatment of organizational requirements around proof of identity.

[62] What about the kind and extent of documentation collected? Fox's evidence is that the CRA only requires, where a NOA is not available, copies of three of the following documents:

- (a) A copy of the individual's B.C. Medical Services Plan Premium billing statement at December 31 for the year prior to the date of principal photography;
- (b) A copy of a billing statement from a utility company;
- (c) A copy of a statement for property tax or municipal tax, or a copy of a residential lease; and
- (d) A copy of a valid BC driver's license or provincial identification card.⁶³

[63] I accept that collection, use and disclosure of residency information is reasonable and thus permitted under ss. 13, 16 and 19 of PIPA for the purposes of establishing, managing or terminating employment relationships between Fox and individuals it employs on productions for which it intends to seek tax credits under the BC Programs or the Federal Program or all of them. This finding relates specifically to Fox's collection, use and disclosure of residency information for the purposes of audits of Fox's tax credit claims to establish Fox's eligibility for the credits claimed.

It should be underscored that, in this case, the expectations of the CRA and the Ministry around proof of residency, in the form of copies of supporting documentation such as a NOA or other identification, are important. It is questionable that an organization could, speculating on a possible and perhaps unlikely requirement on the part of a government agency for supporting personal information, create a dragnet for employee personal information on the off-chance that it will be needed to justify some action or activity of the employer. There is a much more direct and specific expectation, or practical requirement, in operation here than such a situation would present.

⁶² http://www.privcom.gc.ca/cf-dc/2006/334_20060221_e.asp.

⁶³ Para. 52, Celentano affidavit. Fox should align its practices with what the CRA requires. Specifically, there is nothing to suggest the CRA has required Fox to collect social insurance numbers from individuals. Fox should therefore not collect it for that purpose alone. If Fox does not otherwise collect social insurance numbers for employment relationship purposes, it can do so through this process, but it should not collect them if they are otherwise made available to Fox.

[64] This decision relates to residency information, *i.e.*, information showing an individual's place of residency at the relevant time or times. If Fox collects other personal information, it is not employee personal information and Fox must not collect it except in accordance with PIPA's other provisions as to notice to, and consent by, the individuals from whom it is collected. For example, an individual's Medical Services Plan number or premium information is not information to establish residency. The individual's utility company account number or the amounts owing or paid on the account are not information showing eligible residency. The same goes for the individual's driver's licence or identification card numbers, financial information in statements for property or municipal tax or in a lease.⁶⁴

[65] In this light, Fox must make a reasonable effort to ensure that individuals submitting documents containing information as to residency and other personal information are given the opportunity, and the means, to remove or obscure other personal information unless they consent to handing that information over. Fox says it allows anyone providing a NOA to obscure personal tax information and it must do the same for other documents that it collects. Collecting only the personal information it needs minimizes the amount of personal information Fox collects, thus also reducing the risk of unauthorized use or disclosure of that information.

[66] **3.4 Information About Fox's Privacy Policies**—Section 5 of PIPA requires organizations to take positive steps in relation to the policies and practices they implement to meet PIPA's requirements:

Policies and practices

- 5 An organization must
 - (a) develop and follow policies and practices that are necessary for the organization to meet the obligations of the organization under this Act,
 - (b) develop a process to respond to complaints that may arise respecting the application of this Act, and
 - (c) make information available on request about
 - (i) the policies and practices referred to in paragraph (a), and
 - (ii) the complaint process referred to in paragraph (b).

[67] Fox says that it makes its written privacy policy available to employees, but not necessarily others who ask for it; in the latter case, it will "verbally discuss its privacy policy with others upon request, without actually providing a written

⁶⁴ This limitation on the personal information collected is consistent with the finding of Assistant Commissioner Heather Black in PIPEDA Case Summary 280. http://www.privcom.gc.ca/cf-dc/2004/cf-dc_040722_e.asp In that case, she found that a telecommunications company could require two pieces of identification but did not need to collect the "details and numbers" of the identification. In other respects, Case Summary 280 is similar to Order P05-01, discussed above.

copy of it.”⁶⁵ Fox’s employees are given instructions respecting its privacy policy and practices and these employees can, if requested, provide information about them.

[68] Fox says it is sufficient that it answered the complainant’s questions about its policy and provided a summary of it on request.⁶⁶ It says that it has taken all of the steps it is required to take to ensure its compliance with PIPA, including implementing a privacy policy and training its employees. It says that, in the circumstances, its refusal to provide a copy of its written privacy policy to the complainant was both reasonable and complied with PIPA’s requirements.

[69] Although Fox says the complainant’s position is that PIPA requires Fox to make its privacy policies available to the public, the complainant denies this.⁶⁷ The complainant says this in the complainant’s reply submission:

53. ... I requested written disclosure of their privacy policy as well as disclosure with regard to other privacy concerns articulated in my letter to them, ie. database security; personal information crossing the border; the names, titles, and contact numbers for all those who would have access to the personal information collected, etc.

54. Ms. Elizabeth Tompkins at Fox ignored my letter (something she and Fox Affiliates neglect to mention) and when I followed up 1 1/2 months later, she verbalized some or all of their privacy policy, yet refused to send it to me in writing, despite my saying that I could not mentally retain or review the policy that she had quickly verbalized. She also would not answer the other privacy concerns in my letter to her, either verbally or in writing. It does not take much logic to reason out why I, not Fox, should and would have the choice between accepting either a verbal or written disclosure of a privacy policy, or of other privacy concerns. Under these circumstances, Fox, represented by Ms. Tompkins, breached PIPA , 4(1), 4(5), 5, and 10(1);

[70] The complainant adds that, because of the “potential employment circumstances”, the complainant was entitled to “proper disclosure – in writing – of Fox’s privacy policy and practices and disclosure regarding the other privacy concerns articulated in my letter to them.”⁶⁸ The complainant also objects that, if Fox only gives copies of its privacy policy to employees, individuals whom Fox does not yet employ are put in the difficult position of handing over their personal information without getting a copy of Fox’s privacy policy first.⁶⁹

[71] I will deal first with this last point. An organization may, in meeting its s. 5(a) obligation to “develop and follow policies and practices that are necessary for the organization to meet the obligations of the organization under” PIPA,

⁶⁵ Para. 6, Fox initial submission.

⁶⁶ Para. 39, Fox initial submission.

⁶⁷ Para. 50, complainant’s reply submission.

⁶⁸ Para. 55, complainant’s reply submission.

⁶⁹ Para. 56, complainant’s reply submission.

create a 'privacy policy' that includes a notice of collection of personal information. But these policies and practices will address more than the notice question. As noted earlier, Fox gives notice to the individuals it hires of the purposes for which it collects residency information and its notice complies with Fox's PIPA obligation in this respect. Anyone handing over their residency information at the time of hiring knows why Fox is collecting it, *i.e.*, how Fox will use and disclose it. The fact Fox does not give its employees a copy of its 'privacy policy' until after they are hired is not in this light objectionable under PIPA.

[72] The main concern, as I understand it, is that Fox failed to give the complainant a copy of Fox's written privacy policy, which Fox acknowledges exists, when the complainant asked for it. Fox says PIPA does not require it to provide a copy of its privacy policy to the complainant even if asked to do so.

[73] Section 5(c) says an organization must "make information available on request about" its "policies and practices" developed under s. 5(a) and about the "complaint process" required under s. 5(b). An organization may find that it is easier to simply hand over a copy of its privacy policy or complaint process than to answer questions or otherwise make information available. There is certainly a good business case for organizations to be transparent with customers, employees and others with whom they deal. Openness about good practices and policies will foster trust and thus loyalty, which can translate into repeat business and perhaps even lower employee turnover.

[74] There is, however, no duty under s. 5(c) for an organization to provide anyone a copy of any written policies and procedures, on request or otherwise. The legislative language is clear. It only requires organizations to make "information about" policies, practices and processes available on request. This interpretation both respects the clear legislative language of s. 5(c) and accords with the legislative intent underlying PIPA.

[75] The complainant asked questions of Fox about privacy concerns the complainant had and about alleged breaches of PIPA.⁷⁰ The questions, which would almost certainly have entailed detailed answers, went beyond a request for information about policies, practices and processes under s. 5. PIPA does not require an organization to make other information available, but that is what the complainant expected of Fox. If the complainant wanted to complain to Fox about its practices, the complainant could have done so using the complaint processes required under s. 5(c), but, assuming for discussion purposes only

⁷⁰ See for example, paras. 57 and 58 of the complainant's reply submission. The complainant's October 29, 2004 letter to Fantastic Four contained, in nine numbered paragraphs, questions asking for, among other things: the contact names of CRA and BC Film Commission and any other relevant individuals and offices involved; details of how Fox had given performers time to fulfill the requirement for residency information; whether Fox prefers to engage as many people as possible from within British Columbia; the names of all the individuals or organizations that have or could have access to residency information (internal and external, including in the United States), and the names, titles and contact particulars for all such individuals.

that Fox failed to answer the complainant's questions, any such failure was not in these circumstances a breach of s. 5(c).

[76] **3.5 Does Fox Employ Reasonable Security Arrangements?—** Section 34 of PIPA places a positive obligation on organizations to protect personal information in their custody or under their control “by making reasonable security arrangements to prevent unauthorized access, collection, use, disclosure, copying, modification or disposal or similar risks”.

[77] The complainant says Fox has failed to do this, including because of the complainant's concerns—which appear to be based partly on the complainant's experience with other production companies not related to Fox—that photocopies of identification documents have been left lying around production locations without adequately being secured.

[78] For its part, Fox says that the personal information it obtains is adequately protected and that its security arrangements meet the standard required under s. 34. Celentano's evidence on this point is as follows:

13. The local Fox production accountant then sends the personal information collected from the B.C. cast and crew members to Los Angeles, California, where it is kept in secure, locked filing cabinets in the Fox accounting department, under the supervision of the Vice-President of Post-Production Accounting, currently Dana Papazian-Edwards. Access by Fox personnel is limited to authorized persons only.

14. Following completion of the CRA audit, all documents containing the personal information of Canadian cast and crew are shredded. The personal information is only kept by Fox as long as reasonably necessary for the purpose of the CRA audit.

15. Other than the authorized personnel of Fox, the Canadian federal and provincial tax authorities, and the preparers of Fox's federal and provincial tax returns, on an as-needed basis, Fox does not disclose any individual's personal residency information to anyone at any time.

[79] The issue of what s. 34 requires of organizations has not yet been directly addressed. In two Investigation Reports issued earlier this year under the *Freedom of Information and Protection of Privacy Act* (“FIPPA”), however, this Office considered the meaning of “reasonable security arrangements” in s. 30 of FIPPA. Although the operative language of s. 34 is the same as that found in s. 30 of FIPPA, there may be some differences between the requirements under the two statutes. Still, I consider the following discussion from Investigation Report F06-01⁷¹ about “reasonable security arrangements” is of use here:

⁷¹ [2006] B.C.I.P.C.D. No. 7.

What does “reasonable” mean?

[49] By imposing a reasonableness standard in s. 30, the Legislature intended the adequacy of personal information security to be measured on an objective basis, not according to subjective preferences or opinions. Reasonableness is not measured by doing one’s personal best. The reasonableness of security measures and their implementation is measured by whether they are objectively diligent and prudent in all of the circumstances. To acknowledge the obvious, “reasonable” does not mean perfect. Depending on the situation, however, what is “reasonable” may signify a very high level of rigour.

[50] The reasonableness standard in s. 30 is also not technically or operationally prescriptive. It does not specify particular technologies or procedures that must be used to protect personal information. The reasonableness standard recognizes that, because situations vary, the measures needed to protect personal information vary. It also accommodates technological changes and the challenges and solutions that they bring to bear on, and offer for, personal information security.

[80] In discussing what “reasonable security arrangements” entail in Investigation Report F06-01, I considered the relevance of the sensitivity of the personal information at stake, the foreseeability of a privacy breach and resulting harm, the relevance of generally accepted or common practices in a particular sector or kind of activity, the medium and format of the record containing the personal information, the prospect of criminal activity or other intentional wrongdoing, and the cost of security measures.⁷²

[81] There is no specific allegation, much less any sufficient evidence, in relation to Fox’s practices respecting the Fantastic Four production or otherwise of any failure to implement reasonable security measures. Although the complainant has raised concerns about personal information being left unsecured at production locations and perhaps going astray, the complainant has not clearly alleged that this happened in relation to the complainant’s own personal information in the hands of Fox during the Fantastic Four production.

[82] As already noted, Carol Celentano’s affidavit contains evidence about Fox’s security arrangements. I am satisfied that Fox’s practices in limiting access to the information, its storage of personal information under lock and key under the supervision of its Vice-President of Post-Production Accounting in a secure filing system, and its destruction following completion of the CRA audit together satisfy Fox’s obligations under s. 34.

⁷² In a recent investigation report, Alberta’s Office of the Information and Privacy Commissioner considered, under Alberta’s *Personal Information Protection Act*, the similar obligation under that statute for organizations to take reasonable security measures to protect personal information against similar risks took a similar approach to the meaning of “reasonable security measures” under s. 34 of Alberta’s legislation. See Investigation Report P2006-IR-004, [2006] A.I.P.C.D. No. 47.

[83] I will say in passing that film production corporations and other organizations must implement reasonable security arrangements for the on-site security at production locations, whether on set or in the production office, and in transit to secure storage. Allowing personal information in documents to lie around exposed on tables or to otherwise be accessible would not be acceptable. As soon as an individual provides copies of documents, they must be accepted under conditions of reasonable security that guard against their unauthorized use, disclosure or disposal and they should be conveyed in a secure manner to safekeeping, and later for secure disposal when no longer required for tax credit program audit purposes.

[84] The complainant did mention, in the complainant's letter asking Fox questions and in a few places in the complainant's submissions in this inquiry, the issue of personal information security where the information leaves Canada. The complainant said that, if "personal information crosses the border, no one can assure security of personal information".⁷³ The complainant also said that, once personal information is in the United States, "it is subject to the Patriot Act, which overrides Fox's compliance to PIPA [*sic*]"⁷⁴

[85] Of course, no one can, as the complainant put it, "assure" the security of personal information. PIPA requires no assurances in the nature of guarantees—it requires organizations to take "reasonable" security measures to protect personal information. Personal information routinely crosses borders in the ordinary course of commerce, but this does not necessarily decrease its security. The geographic location of personal information, which may change throughout the lifecycle of a transaction, is far from determinative of threats to the security of personal information. Personal information may be at risk in British Columbia and be better protected elsewhere.

[86] While personal information located outside British Columbia is subject to the laws that apply where it is found, the "risk of personal information being disclosed to government authorities is not a risk unique to U.S. organizations."⁷⁵ The nature or degree of risk of access to personal information by national security or law enforcement authorities is not necessarily greater outside British Columbia. Various PIPA provisions authorize organizations to, without notice or consent, disclose personal information located in British Columbia to law enforcement agencies. PIPA authorizes disclosure under a court order or similar process⁷⁶ and allows organizations to voluntarily disclose it for law enforcement purposes in certain cases.⁷⁷

⁷³ Para. 28, complainant's initial submission.

⁷⁴ Para. 12, complainant's reply submission.

⁷⁵ PIPEDA Case Summary 333. http://www.privcom.gc.ca/cf-dc/2006/333_20060511_e.asp.

⁷⁶ See s. 18(1)(i) of PIPA.

⁷⁷ See s. 18(1)(j) of PIPA.

[87] The complainant has mentioned the *USA Patriot Act*. This office's 2004 report on the *USA Patriot Act* and privacy in British Columbia⁷⁸ addressed privacy implications, under the *Freedom of Information and Protection of Privacy Act*, of provincial government decisions to outsource to the private sector public services involving the collection, use and disclosure of health and other personal information. The report addressed the risk of access to personal information located in Canada through extra-territorial application of the *USA Patriot Act* or other foreign laws and it recommended measures to, among other things, protect personal information of British Columbia residents located in British Columbia.

[88] Fox collects personal information to prove an individual's residency in British Columbia or Canada. It is not collecting information such as health information, financial information, educational information or information about employment history. The information it collects will more often than not, though not in every case, be available to the public in telephone books or in internet directories. This non-sensitive personal information is stored in the United States under lock and key, access to it is limited, and it is shredded following completion of the CRA audit. I have found that these security measures meet Fox's obligations under s. 34 of PIPA and see no reason to conclude that the storage of this information in the United States under the conditions just described is problematic under s. 34.⁷⁹

[89] Last, I do not consider that, in the circumstances of this case (including the nature of the employee personal information), there is any obligation to notify employees that their personal information may be located in the United States or elsewhere. I recommend that Fox consider giving notice to prospective employees as a measure of transparency—so they can decide whether they wish to be hired—but it has no duty under PIPA to do so here.

4.0 CONCLUSION

[90] To summarize, I have found that Fox is authorized to collect, use and disclose, as "employee personal information", information establishing residency of the individuals that it employs for the tax credit audit purposes described above. Its notification to individuals of the purpose for which it collects this employee personal information satisfies its PIPA obligations in this regard. Section 5(a) does not require Fox to make a copy of its written privacy policy available to the public, *i.e.*, to anyone who asks. Last, Fox's arrangements satisfy its obligations under s. 34 respecting the security of personal information.

[91] Despite the outcome here, the CRA should clarify for film industry participants what its requirements are for establishing eligible residency. If, for

⁷⁸ *Privacy and the USA Patriot Act: Implications for British Columbia Public Sector Outsourcing*. http://www.oipc.bc.ca/sector_public/archives/usa_patriot_act/pdfs/report/privacy-final.pdf.

⁷⁹ I will note here that, since this office's 2004 report, relevant *USA Patriot Act* provisions have been renewed or made permanent, but on renewal certain safeguards were put in place respecting the s. 215 orders and national security letters that were a focus of our report. For a summary of these safeguards, see <http://judiciary.house.gov/Printshop.aspx?Section=232>.

example, it were to accept a sworn declaration of personal residency⁸⁰ and not require copies of supporting documentation, this would minimize the collection of personal information and would ease the administrative burden on production companies and individuals participating in this important industry.

October 26, 2006

ORIGINAL SIGNED BY

David Loukidelis
Information and Privacy Commissioner
for British Columbia

OIPC File No. P05-24621

⁸⁰ An example of such a declaration is the Film Incentive BC form contained in the material submitted to me in this inquiry.