



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

Protecting privacy. Promoting transparency.

Order P13-02

**THYSSENKRUPP ELEVATOR (CANADA) LIMITED**

Ross Alexander  
Adjudicator

August 28, 2013

Quicklaw Cite: [2013] B.C.I.P.C.D. No. 24

CanLII Cite: 2013 BCIPC No. 24

**Summary:** TKE assigns its company service vehicles to specific employees. It installed monitoring devices in those vehicles, which provide the company with vehicle location and operation information. A TKE employee complained that TKE was not permitted to use this information for employee management purposes under PIPA. The adjudicator concluded that TKE was permitted to collect and use the information in the manner and for the purposes identified by TKE to manage its employment relationships. However, the adjudicator was not satisfied that TKE had properly notified the complainant about its collection, uses and purposes for this information, thereby failing to comply with ss. 13(3) and 16(6) of PIPA. The adjudicator also concluded that TKE breached s. 5 of PIPA. The adjudicator ordered TKE to stop collecting and using the information until it provided the required notice.

**Statutes Considered:** *Personal Information Protection Act*, ss. 5, 10, 11, 13, 14, and 16.

**Authorities Considered:** **B.C.:** Order P13-01, [2013] B.C.I.P.C.D. No. 23; Order P12-01, [2012] B.C.I.P.C.D. No. 25; Order F13-04, [2013] B.C.I.P.C.D. No. 4; Order F07-18 [2007] B.C.I.P.C.D. No. 30; Decision P12-01, [2012] B.C.I.P.C.D. No. 11; Order P06-04, [2006] B.C.I.P.C.D. No. 35. **AB:** Order F2005-003, [2005] A.I.P.C.D. No. 23. **Canada:** Case Summary #351, [2006] C.P.C.S.F. No. 28 (QL).

**Cases Considered:** *Dagg v. Canada (Minister of Finance)*, [1997] 2 S.C.R. 403; *Eastmond v. Canadian Pacific Railway*, [2004] F.C.J. No. 1043.

## INTRODUCTION

[1] This inquiry concerns whether elevator service company ThyssenKrupp Elevator (Canada) Limited (“TKE”) is authorized under PIPA to collect and use information from technology called the Fleet Complete system, which it installed in its company vehicles in 2010.

[2] The complainant is a TKE employee – a member of Local 82 of the International Union of Elevator Constructors (“Union”) – who made a complaint to the Office of the Information and Privacy Commissioner (“OIPC”) that TKE is collecting and using information from the Fleet Complete system in contravention of the *Personal Information Protection Act* (“PIPA”).

[3] This order is being released contemporaneously with Order P13-01,<sup>1</sup> which relates to a PIPA complaint involving another elevator company and its employees about analogous technology. Both of these orders follow Order P12-01, in which Commissioner Denham analyzed the law in relation to Fleet Complete system technology used by a different elevator company.<sup>2</sup>

## ISSUES

[4] The complainant alleges that TKE is collecting and using information from the Fleet Complete system in breach of ss. 5, 10, 11, 13, 14 and 16 of PIPA. The question at the heart of this case is whether TKE can use the information it collects from the Fleet Complete system to manage employment relationships with its employees. Specifically, the issues in this inquiry are:

1. Is the information collected by TKE’s Fleet Complete system “personal information”, as defined in s. 1 of PIPA? If no, PIPA does not apply.
2. If yes to question 1, is the collected information “employee personal information”, as defined in s. 1 of PIPA?
3. If PIPA applies, does PIPA authorize TKE to collect and use the information from the Fleet Complete system?
4. If yes to question 3, has TKE met its PIPA notice requirements?

---

<sup>1</sup> [2013] B.C.I.P.C.D. No. 23.

<sup>2</sup> Order P12-01, [2012] B.C.I.P.C.D. No. 25. The parties in this inquiry did not have the reasons from Order P12-01, [2012] B.C.I.P.C.D. No. 25 before them in arguing this case because the submissions in this inquiry were made at the same time as the submissions giving rise to Order P12-01. Also see Order F13-04, [2013] B.C.I.P.C.D. No. 4, which considered a GPS tracking system installed in company vehicles. The employer in that order was a public body so the *Freedom of Information and Protection of Privacy Act* (“FIPPA”) applied, but many of the same principles apply under PIPA.

5. Has TKE met its obligations regarding notice, policies and practices under s. 5 of PIPA?

## DISCUSSION

[5] **Background**—TKE manufactures, installs and services elevators, escalators and moving walkways. TKE's service business generally requires TKE to have a mechanic at the client's building site within a specified time after a request for service.

[6] TKE assigns its service vehicles to specific elevator maintenance mechanics, who keep the vehicles at their homes. Mechanics generally go directly from their homes to client locations to begin their workdays, without checking in at a TKE office for attendance or payroll purposes. Mechanics are also each assigned a specific geographic area, and are responsible for attending customer sites and responding to maintenance and service work calls in their assigned area. Mechanics are not permitted to use their assigned vehicle for non-work related purposes.

[7] **Description of the System**—The Fleet Complete system is a monitoring device installed in vehicles with accompanying software. The device transmits vehicle operation and GPS location information to TKE's computer database, where software applications arrange the information for TKE to use. TKE installed Fleet Complete devices in its elevator maintenance service vehicles in British Columbia over a four-month period in 2010.

[8] The Fleet Complete device collects and transmits:

- vehicle location information to a "street address" level of detail ("GPS Information"); and
- engine status and vehicle operation information ("Engine Status Information"), such as:
  - i) vehicle speed;
  - ii) harsh breaking;
  - iii) rapid acceleration;
  - iv) idling;
  - v) whether the ignition is turned on or off; and
  - vi) when the vehicle leaves a particular location.

[9] I will refer to the GPS Information and Engine Status Information collectively as the "Fleet Complete Information".

[10] The Fleet Complete device can transmit the Fleet Complete Information to TKE in near real-time for multiple functions or uses, such as displaying the GPS Information in a viewable map and providing email “alerts” that are triggered when a vehicle is being operated contrary to established parameters or leaves a given location. The Fleet Complete system gives TKE the ability to know the location of every vehicle in its fleet at any time, as well as how, or if, it is being operated. Further, the Fleet Complete system retains the Fleet Complete Information, so TKE can generate reports comprised of this information (“Reports”).

[11] TKE states that the uses of the Fleet Complete system are to:

- verify employee payroll, attendance and time-keeping information for employee performance and evaluation purposes;
- ensure that company vehicles are only being used in accordance with TKE's fleet policy (*i.e.*, that the vehicle is only being used for work purposes, etc.) for employee management, including discipline;
- ensure that company vehicles are adequately maintained by tracking the number of kilometres a vehicle has driven since its last service visit, and having an automatically generated “alert” when a vehicle reaches a certain number of kilometres;
- identify and make employees aware of speeding and other similar concerns by providing an incentive for employees to drive safely;
- have better evidence of its mechanics' locations at a given time to better enable TKE to respond to client complaints or billing inquiries, third party complaints, and litigation;
- identify inefficient service routes, so those routes can be redesigned to increase efficiency and decrease travel costs;
- identify the last known location of a TKE vehicle for safety purposes in the event TKE is unable to reach or respond to a mechanic in the field; and
- dispatch mechanics in an efficient manner, and reprioritize work assignments in a way that is advantageous to TKE and optimally responsive to its clients' needs.<sup>3</sup>

---

<sup>3</sup> The nexus of the uses and purposes are in TKE submissions at paras. 46 and 76 to 78, and the Affidavit of J. Kerr #1 at Exhibit “J” and paras. 70, 75 and 76.

[12] TKE's evidence is that the use of the Fleet Complete system will also have incidental benefits such as fuel savings, lower vehicle fleet mileage and reduced carbon emissions.<sup>4</sup>

[13] TKE is still implementing the Fleet Complete system, so it is not yet using the Fleet Complete Information for all of the purposes listed above. However, this order does not generally differentiate between TKE's existing uses for the information, and those that are still being implemented.

[14] TKE explains that it is not seeking to continuously monitor the Fleet Complete Information, and it intends to limit who has access to this information. For example, TKE intends to give its dispatchers access to the GPS Information in near real-time for dispatching purposes when dispatching is implemented, but not the Reports containing Engine Status Information.<sup>5</sup> The mechanics' supervisors do not continuously monitor the Fleet Complete Information.

#### *Positions of the Parties*

[15] The complainant submits that TKE is using the Fleet Complete system to monitor, scrutinize and make decisions about its employees, including employee discipline. He states that the real purpose "...is to track them electronically and to watch them with an electronic eye", and does not want TKE to collect the Fleet Complete Information.<sup>6</sup> Other TKE employees echo this concern.<sup>7</sup> The complainant submits that the Fleet Complete Information is "personal information", is not "employee personal information", and cannot reasonably be collected or used by TKE – particularly to monitor, evaluate or discipline employees. The complainant also submits that TKE has neither produced a specific Fleet Complete policy, nor promulgated any limitations or restrictions on access, use or retention of the Fleet Complete Information, which the complaint states is required by PIPA.

[16] TKE acknowledges that the Fleet Complete Information has a number of uses related to the employment relationship, and that "[a]n unjustified failure to comply with a mandatory company policy can, for example, give just cause for discipline." TKE submits, however, that the Fleet Complete Information is about TKE's service vehicles, and is not personal information as defined by PIPA.<sup>8</sup> TKE submits that the Fleet Complete Information is not "personal information", but if I determine that it is "personal information," then it is in the sub-category of "employee personal information". TKE disputes that it is conducting surveillance on its employees. It states that it is entitled to collect and use the Fleet Complete Information, including for monitoring, evaluating and disciplining employees. It also submits that it has provided the required notice to the complainant.

---

<sup>4</sup> Affidavit of J. Kerr, at Exhibit "J" and paras. 69, 71 and 72.

<sup>5</sup> Affidavit of J. Kerr, at para. 56.

<sup>6</sup> Complainant's submissions, at para. 23; Complainant's Affidavit, at para. 16.

<sup>7</sup> Affidavit of Employee #3, at para. 10; Affidavit of Employee #1, at para. 17.

<sup>8</sup> TKE submissions, at paras. 77 and 78.

[17] **Is the Information “personal information”?**—The first issue is whether the Fleet Complete Information is personal information, since PIPA only applies to personal information. PIPA defines “personal information” as:

...information about an identifiable individual and includes employee personal information but does not include

- (a) contact information, or
- (b) work product information;

[18] The parties provided comprehensive analyses of the definition of “personal information”, providing case law from multiple jurisdictions and arguing that statutory interpretation principles support their respective positions.

[19] In short, the complainant submits that the Fleet Complete system collects personal information because the location, movements and operational parameters of a TKE vehicle is uniquely related to the location, movements and operational conduct of the identifiable individual employee who has been assigned to that vehicle. Conversely, TKE submits that the Fleet Complete Information is not personal information because the information does not reveal anything *about* employees, is not inherently personal to employees, and employees cannot reasonably expect to treat the information as confidential. TKE further submits that the information is “work product information”, which is excluded from the PIPA definition of personal information.

[20] In Order P12-01, Commissioner Denham determined that Fleet Complete Information collected by the elevator company’s service vehicles in that case was personal information under PIPA. In reaching this conclusion, she states that:

...‘personal information’ is information that is reasonably capable of identifying a particular individual, either alone or when combined with other available sources of information, and is collected, used or disclosed for a purpose related to the individual. Consistent with PIPA’s statutory purposes, this recognizes that information may be used for different purposes at different times.<sup>9</sup>

[21] Further, as stated in Order P12-01, the definition of personal information under PIPA is not restricted to information about an individual’s personal or private life. It encompasses information about an individual in their employment, business or professional capacity.<sup>10</sup> I adopt the approach to interpreting the meaning of personal information from Order P12-01 and apply it here.<sup>11</sup>

---

<sup>9</sup> [2012] B.C.I.P.C.D. No. 25, at para. 85; Order F13-04, [2013] B.C.I.P.C.D. No. 4, also concluded that similar information was “personal information” under FIPPA.

<sup>10</sup> [2012] B.C.I.P.C.D. No. 25, at paras. 83 and 84.

<sup>11</sup> [2012] B.C.I.P.C.D. No. 25; Also see *Dagg v. Canada (Minister of Finance)*, [1997] 2 S.C.R. 403 and Order F07-18, [2007] B.C.I.P.C.D. No. 30, which are referenced in Order P12-01.

[22] This case is analogous to Order P12-01 in that TKE knows what mechanic it has assigned to each vehicle, so it can ascribe the Fleet Complete Information to individual employees. TKE is capable of determining the location of a mechanic's vehicle at a given time, or using the Engine Status Information to, for example, determine whether the mechanic has been speeding or operating the vehicle outside of work hours. TKE management has used Fleet Complete Information to warn an employee for speeding on at least one occasion, which is inconsistent with the argument that the information is not about the employees.<sup>12</sup> I find that the Fleet Complete Information is information about an identifiable individual.

[23] **Is the Fleet Complete Information “work product information”?**—TKE submits that the Fleet Complete Information is excluded from the definition of personal information because it is work product information. PIPA defines work product information as follows:

“work product information” means information prepared or collected by an individual or group of individuals as part of the individual's or group's responsibilities or activities related to the individual's or group's employment or business but does not include personal information about an individual who did not prepare or collect the personal information.

[24] TKE submits that the GPS Information is “prepared” by its employees. I do not accept this submission. I agree with Commissioner Denham's statement in Order P12-01 when she states:

...information that comes into existence through a machine's automatic recording of data, without directed, conscious input by an individual as part of the process by which the information comes into existence, is not information “prepared or collected by” that individual.<sup>13</sup>

[25] In my view, the Fleet Complete Information is machine-generated in a manner that is incidental to the conscious, directed actions of individuals. I also agree with Commissioner Denham's characterization of the Fleet Complete Information in Order P12-01 when she states:

The responsibilities or activities of [the employer's] mechanics are to service and repair elevators, travelling to and from their homes and job sites to do that. The system that [the employer] has installed reflects how, where and when its employees are driving those vehicles (along with other data). This is not, in any real sense, information that the mechanics themselves prepare or collect.<sup>14</sup>

[26] Similarly, I find here that the TKE employees do not prepare or collect the Fleet Complete Information. Consequently, this information does not meet the definition of “work product information”. The “work product information” exclusion does not apply.

<sup>12</sup> Affidavit of R. Houston, at para. 11.

<sup>13</sup> [2012] B.C.I.P.C.D. No. 25, at para. 96.

<sup>14</sup> [2012] B.C.I.P.C.D. No. 25, at para. 97.

[27] I am satisfied that the Fleet Complete Information is personal information.

[28] **Is the Fleet Complete Information “employee personal information”?**— Organizations are authorized to collect and use “employee personal information” without consent in more circumstances than for non-employee “personal information” under PIPA, so it is necessary to determine whether the Fleet Complete Information is employee personal information. PIPA defines “employee personal information” as:

...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;

[29] In Order P06-04, former Commissioner Loukidelis interpreted the definition of “employee personal information” to include four distinct elements, stating:

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.
4. The personal information must not be “personal information that is not about an individual's employment”.<sup>15</sup> [Emphasis added]

[30] I previously determined that the Fleet Complete Information is personal information. I also find that this information is about an individual's employment. Therefore, elements one and four are satisfied.

[31] The complainant submits that the Fleet Complete Information is not reasonably required for any purpose. I disagree. I find that TKE's general purposes for collecting and using the Fleet Complete Information – such as to ensure that employees are driving company vehicles lawfully and with reasonable care – are legitimate purposes reasonably required to establish, manage or terminate an employment relationship. Further, it is a legitimate business purpose for an employer to take reasonable steps to attempt to ensure that its employees are complying with company policies and working the hours they are paid for. TKE using the Fleet Complete Information for employee time reporting is, for example, similar to workers having a swipe time card or being directly observed by a supervisor at their workstation. TKE has a reasonable interest in knowing where its employees are during work hours. I find that element two has been

---

<sup>15</sup> [2006] B.C.I.P.C.D. No. 35, at para. 38.



met.<sup>16</sup> My conclusion is also consistent with Commissioner Denham’s findings in Order P12-01.<sup>17</sup>

[32] With respect to personal information being collected “solely” for employment management purposes, Commissioner Denham noted in Order P12-01 that this does not mean the information may only have one purpose. The focus is on the employer’s purposes:

What matters in assessing the “solely” criterion is whether, as between the organization and the employee, the organization’s sole purpose in collecting, using or disclosing information in its character as ‘employee personal information’ is to manage an employment relationship.<sup>18</sup>

[33] There is no evidence that TKE intends to use the complainant’s personal information as personal information for purposes other than to establish, manage or terminate the employment relationship. I find that element three has been met.

[34] Taking into account the relevant considerations outlined in Order P06-04, I conclude that the Fleet Complete Information is employee personal information under PIPA.

[35] **TKE Collecting and Using Information under ss. 13 and 16 of PIPA**—As Commissioner Denham stated in Order P12-01, the fact that the Fleet Complete system generates ‘employee personal information’ does not end the matter.<sup>19</sup> TKE can only collect or use that information if the PIPA provisions governing the collection and use of employee personal information also allow it. Those provisions are found in ss. 13 and 16, which respectively apply to the collection and use of employee personal information without consent.

[36] **Does PIPA Only Require Notice for Valid Collection or Use?**—I will first address TKE’s argument that after information is determined to be ‘employee personal information’, compliance with ss. 13 and 16 is really just about giving notice. Sections 13(3) and 16(3) together require an organization to notify an individual that it will be collecting or using employee personal information about the individual, and the purposes for the collection or use, before the organization collects or uses that information without the individual’s consent. According to TKE, giving proper notice under ss. 13(3) and 16(3) simply “enables” it to collect and use employee personal information for employee evaluations, investigations and discipline.<sup>20</sup> The complainant argues that providing notice under s. 13(3) does not permit or “enable” the collection of

---

<sup>16</sup> This element is a separate issue than whether the collection, use or disclosure of employee information is reasonably required and authorized under ss. 13, 16 and 19 of PIPA.

<sup>17</sup> [2012] B.C.I.P.C.D. No. 25, at paras. 121 and 141; Order P06-04, [2006] B.C.I.P.C.D. No. 35, at para. 56.

<sup>18</sup> [2012] B.C.I.P.C.D. No. 25, at para. 122.

<sup>19</sup> [2012] B.C.I.P.C.D. No. 25, at para. 123.

<sup>20</sup> TKE’s submission, at para. 82.

employee personal information. He says that the determining factor is reasonableness under s. 13(2)(b).

[37] Sections 13(3) and 16(3) do require notice to be given as a precondition to collecting or using employee personal information without consent. TKE's argument, however, ignores the express language of ss. 13(2)(b) and 16(2)(b). These provisions provide that the collection or use of employee personal information must be "reasonable for the purposes of establishing, managing or terminating an employment relationship between the organization and the individual". The collection and use must therefore be reasonable within the meaning of ss. 13(2)(b) and 16(2)(b), in addition to TKE providing the required notice, to comply with PIPA.

*TKE's assertion that the Commissioner has no authority here*

[38] I will next deal with TKE's contention that once I have found that the GPS information is employee personal information and that notice has been provided, this inquiry of the matter is complete. TKE submits that it is not in the Commissioner's jurisdiction to make an order prohibiting it from using lawfully collected employee personal information to exercise its management authority in employee relationships, or to oblige it to "willfully ignore" pertinent information for evaluating or disciplining employees. TKE further submits that it is within the jurisdiction of an arbitrator under the collective agreement to determine the validity of disciplinary action taken against employees, or with the courts in the context of wrongful dismissal.<sup>21</sup>

[39] The complainant replies that the matter at issue is within the Commissioner's jurisdiction, and that TKE's position in this regard is contrary to the core intention and functionality of PIPA. He submits that the regime of PIPA restricts TKE from using the personal information for "any extraneous purpose that cannot, itself, be justified as reasonable in accordance with the applicable test for reasonableness", and that the Commissioner may require TKE to cease and desist from engaging in the collection and use of information in contravention of PIPA.<sup>22</sup>

[40] TKE appears to be arguing that the Commissioner has no authority to prohibit it from using the information to discipline or dismiss its employees if there are other permitted uses for the personal information. However, PIPA restricts an organization's use of employee personal information to those uses that are reasonable in the circumstances, within the framework of PIPA. The fact that employee personal information can be reasonably used for one declared purpose does not mean that an organization is necessarily entitled to use the information for other purposes.

[41] TKE also submits that these issues relate to specific conduct within the employment relationship, including TKE's supervision of the employment relationship

---

<sup>21</sup> TKE's initial submissions, at paras. 84 to 87.

<sup>22</sup> Complainant's reply submissions, at paras. 82, 83 and 88.

itself, so only an arbitrator appointed under the collective agreement may rule on these issues. I reject this argument. The issues at hand relate solely to whether TKE's collection and use of the Fleet Complete Information complies with PIPA, and ss. 50 and 52 of PIPA provide the Commissioner with the statutory authority to "decide all questions of fact and law arising in the course of the inquiry" and to make a resulting order. This includes the authority to consider whether TKE's collection and use of the complainant's employee personal information is reasonable in the circumstances within the meaning of ss. 13 and 16.<sup>23</sup> The Commissioner's jurisdiction to determine whether TKE is complying with PIPA is not ousted simply because the complainant and TKE are parties to a collective agreement.<sup>24</sup>

*Is TKE's Collection and Use of Employee Personal Information in Compliance with ss. 13(2)(b) and 16(2)(b)?*

[42] Sections 13(2)(b) and 16(2)(b) establish the framework for evaluating whether the collection and use of employee personal information is reasonable. They provide that an organization may only collect or use employee personal information without consent where it is "reasonable for the purposes of establishing, managing or terminating an employment relationship between the organization and the individual".

[43] Sections 13(2)(b) and 16(2)(b) relate to the reasonableness of collection and use. In deciding that the Fleet Complete Information is "employee personal information", I determined that TKE is collecting and using the information for "purposes reasonably required" to establish, manage or terminate an employment relationship. This does not mean, however, that TKE has established that ss. 13(2)(b) and 16(2)(b), which consider the circumstances of the collection and use of the Fleet Complete Information, have been satisfied. Previous orders have explained this distinction as follows:

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

---

<sup>23</sup> Case law does not support the view that an arbitrator appointed under a collective agreement has exclusive jurisdiction respecting issues under PIPA, over which, as noted above, the Commissioner also has explicit authority as provided in PIPA. See Supreme Court of Canada decisions such as *Weber v. Ontario Hydro*, [1992] 2 S.C.R. 929 and *Regina Police Assn. Inc. v. Regina (City) Board of Police Commissioners*, 2000 SCC 14. Also see Sarah Blake, *Administrative Law in Canada* (5<sup>th</sup> ed), LexisNexis: Toronto, 2011, at pp. 141-143. Blake also discusses the application of issue estoppel in cases of concurrent jurisdiction.

<sup>24</sup> TKE has not pointed to any decision of an arbitrator or other tribunal with which any order I might make would conflict, and the prospect of such an operational conflict would not necessarily mean that no order could or should be made under PIPA. See Order F07-18, [2007] B.C.I.P.C.D. No. 30, for discussion of this issue. I note, however, that the Commissioner may decline to hold an inquiry if a complainant is attempting to re-litigate an issue that was previously decided by a labour arbitrator: See Decision P12-01, [2012] B.C.I.P.C.D. No. 11 (which is a different case than Order P12-01).

circumstances reasonable for the purposes of establishing, managing or terminating the employment relationship.<sup>25</sup>

...

Sections [13, 16 and 19] refer to what is “reasonable for the purposes of establishing, managing or terminating an employment relationship between the organization and the individual”. This requires a further determination, of whether the collection, use or disclosure of employee personal information itself, not the purpose for it, is “reasonable”. Sections 13, 16 and 19 are not redundant—they clearly contemplate further scrutiny, by applying to the collection, use or disclosure an objective standard of what is reasonable, viewed in light of what a reasonable person would consider appropriate in the circumstances...<sup>26</sup>

[44] It is therefore necessary to determine whether the collection or use of employee personal information is reasonable in the circumstances when considering ss. 13(2)(b) and 16(2)(b).

[45] The complainant submits that TKE must meet several conditions to comply with ss. 13(2)(b) and 16(2)(b). The complainant says TKE must demonstrate that there is a substantial problem, which caused TKE to initiate the Fleet Complete system to solve the problem; that the Fleet Complete system will be effective in solving the problem; that the Fleet Complete system is necessary to solve the problem; that TKE has exhausted all available alternatives, and there is nothing else that can be reasonably done to solve the problem in a less privacy intrusive way; and, finally, that the loss of privacy is proportional to the benefit gained. The complainant submits that this is the appropriate test for ss. 13(2)(b) and 16(2)(b) of PIPA, which he says is endorsed by the Federal Court of Canada in *Eastmond v. Canadian Pacific Railway [Eastmond]*.<sup>27</sup>

[46] I do not agree with the complainant’s position. Commissioner Denham considered and rejected the use of the *Eastmond* test in Order P12-01, and I also addressed this argument in Order P13-01.<sup>28</sup> I take the same approach here for the reasons expressed in those Orders.

[47] As Commissioner Denham also stated in Order P12-01, the overriding criterion for ss. 13(2)(b) and 16(2)(b) of PIPA is reasonableness.<sup>29</sup> Section 4(1) of PIPA requires organizations to “consider what a reasonable person would consider appropriate in the circumstances” while balancing the purposes of PIPA, which are 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

<sup>25</sup> Order P06-04, [2006] B.C.I.P.C.D. No. 35, at para. 56; Also see Order P12-01, [2012] B.C.I.P.C.D. No. 25, at para. 141.

<sup>26</sup> Order P12-01, [2012] B.C.I.P.C.D. No. 25, at para. 141.

<sup>27</sup> [2004] F.C.J. No. 1043. *Eastmond* considered the *Personal Information Protection and Electronic Documents Act*, not PIPA.

<sup>28</sup> [2012] B.C.I.P.C.D. No. 25, at paras. 125 to 141; Order P13-01, [2013] B.C.I.P.C.D. No. 23.

<sup>29</sup> [2012] B.C.I.P.C.D. No. 25, at para. 139.

personal information for purposes that a reasonable person would consider appropriate in the circumstances.<sup>30</sup>

[48] Order P12-01 provides further guidance for assessing the reasonableness of the purposes for collecting, using or disclosing employee personal information.<sup>31</sup> It identifies a number of non-exhaustive relevant factors to consider in applying ss. 13(2)(b) and 16(2)(b) in these circumstances:

- sensitivity of the employee personal information (*i.e.*, health history or a medical condition is sensitive information, but an employee's name or home address is not);
- amount of personal information (*i.e.*, Is the employer collecting, using or disclosing more information than is necessary to achieve its purpose(s)?);
- likelihood of effectiveness (*i.e.*, Is there a reasonable likelihood that the collection, use or disclosure of personal information will fulfil the employer's objectives?);
- manner of collection and use of the personal information (*i.e.*, Was the employee aware that the information was being collected, or was it covertly collected? In what circumstances and how often does the employer access the information?);
- less privacy-intrusive alternatives (*i.e.*, Has the employer given reasonable consideration to other methods for achieving its objectives? This factor does not necessarily require the employer to implement the least privacy-intrusive alternative, but the employer must consider the balance between its interest and the right of individuals to protect their personal information); and
- other relevant factors given the circumstances.

[49] I will now address each of these factors in turn.

➤ *Sensitivity and amount of information*

[50] The GPS Information is capable of informing TKE of the location of any employee's vehicle at any time, to the accuracy of an individual street address. It does not pinpoint its employees' exact locations, particularly when employees are not in their vehicles. The GPS Information relates to the workday activities of employees, including the use of assigned service routes, attendance at job sites and performance of other

<sup>30</sup> Section 2; Also see ss. 11 and 14.

<sup>31</sup> [2012] B.C.I.P.C.D. No. 25, at paras. 123 to 166.

tasks. The fact that the information relates to the individual's employment duties on assigned routes and at assigned locations diminishes the sensitivity of the location information between employee and employer, particularly since this information is not continuously monitored. Further, the Engine Status Information collects information relating to work hours and the operation of company vehicles, which is not particularly sensitive information as between an employer and employee.<sup>32</sup> It is also relevant that TKE is not collecting more information than is necessary to meet its purposes.

➤ *Likely effectiveness of the Fleet Complete system*

[51] TKE mechanics are a mobile workforce who generally work alone in widely distributed geographic areas, so regular in-person supervision is not practical. I am satisfied that use of the Fleet Complete system is reasonably likely to be effective for TKE's stated purposes, such as verifying employee attendance, compliance with company policies, regular maintenance for vehicles, safe driving, dispatching and operational efficiency.

➤ *Manner of collection and use of the personal information*

[52] The Fleet Complete Information is not covertly collected. This case is not like Order F07-18, in which an employer installed spyware on an employee's computer without his knowledge.<sup>33</sup> The Fleet Complete system installation required an antenna to be installed on vehicle windshields and the employees are keenly aware that it is GPS technology, with multiple employees deposing that the technology is an "electronic eye".<sup>34</sup>

[53] TKE states that the Fleet Complete Information is currently being used to ensure that its employees are complying with TKE's vehicle fleet policy regarding employee use of company vehicles.<sup>35</sup>

[54] A limited number of TKE's managers receive the weekly Reports containing Fleet Complete Information with information about when a mechanic's vehicle stops, idles, speeds, or is used outside of standard work hours.<sup>36</sup> On occasion, a manager may provide information contained in a Report to the mechanic's supervisor in the context of an investigation.

---

<sup>32</sup> [2012] B.C.I.P.C.D. No. 25, at paras. 154 and 155.

<sup>33</sup> [2007] B.C.I.P.C.D. No. 30; Also see Alberta Order F2005-003, [2005] A.I.P.C.D. No. 23.

<sup>34</sup> Affidavit of Employee #1, at para. 16; Affidavit of Employee #3, at para. 10; Affidavit of Employee #2, at para. 17.

<sup>35</sup> Affidavit of J. Kerr, at para. 64.

<sup>36</sup> Affidavit of J. Kerr, at paras. 37, 52 and 55. TKE's IT personnel receive the information in relation to maintaining the technology. TKE Fleet Management also receives kilometre tracking for a vehicle maintenance purpose.

[55] The Fleet Complete system is also capable of generating an email “alert” that is triggered when a vehicle departs a given location.<sup>37</sup> The only evidence of this email “alert” function being used to date is that one manager set up an “alert” for two or three “problem sites” during the first three months that he started using the Fleet Complete system.<sup>38</sup> He states that a “problem site” is a customer location that has required more than one service visit in the past one or two week period. The manager set up this “alert” as a customer relations tool, so he could investigate the nature of the problems at these sites when he received an alert and provide an explanation to the customer. The manager used these alerts to make inquiries of mechanics when multiple mechanics attended the same service call. However, he never used this information for disciplinary purposes, and he stopped using these alerts when this dispute arose.<sup>39</sup>

[56] The Fleet Complete system can also generate a viewable map using GPS information to show the locations of TKE vehicles. The viewable map is not continuously monitored, but rather is only occasionally viewed to ensure employee compliance with the fleet policy, to attempt to locate a mechanic in the event of a safety concern, or if a company vehicle is stolen. One manager, for example, usually looked at the map in the morning and again at the end of the day, until this dispute arose.<sup>40</sup> This information has not been used for disciplinary purposes, other than a warning about excessive speeding.<sup>41</sup>

[57] There are similar aspects of this case and Order P12-01 in that the employer does not continuously monitor their employees in either case, and in both cases the employer generally looks at information generated by the technology in response to a predetermined triggering event, such as departing a worksite or exceeding a certain speed. TKE looks at this kind of information more frequently than the employer did in Order P12-01 and for the most part closer in time to the triggering event, for example, looking at email “alerts” of a vehicle departing a location shortly after the departure. In my view, however, these differences are not sufficient to cause me to reach

---

<sup>37</sup> Affidavit of J. Kerr, at para. 37

<sup>38</sup> Affidavit of R. Marr, at paras. 16 to 23

<sup>39</sup> Affidavit of Employee #3, at paras. 5 and 6; Affidavit of R. Marr, at paras. 24 to 28 and 33 to 40.

<sup>40</sup> The manager checked the viewable map at the start and end of the day – although not every day – over a three month period. He checked the map in the morning to confirm that at least one maintenance mechanic was in a maintenance route area, so a mechanic could be assigned to any area that had no mechanic coverage. He then checked the map at the end of the day for overtime and mechanic safety purposes. The manager also used this information to inquire with the dispatcher who is contacted by mechanics when they call in sick about the mechanic who called in sick. The dispatcher later disclosed personal information about the mechanic who had called in sick to that mechanic in the presence of other mechanics. However, determining whether this specific disclosure of personal information, which may be contrary to PIPA, is not within the scope of this inquiry: Affidavit of Employee #2, at paras. 14 to 15; Affidavit of R. Marr, at paras. 41 to 45. The manager stopped using the information in this manner when this dispute arose.

<sup>41</sup> Affidavit of R. Houston, at para.11 and R. Marr, at para. 28.

a different conclusion about the reasonableness of TKE's actions here versus that of the employer in Order P12-01.<sup>42</sup>

[58] I find that TKE's practice of using weekly Reports, and infrequently using the map and near-real time email "alerts", is not an unreasonable manner of using the Fleet Complete Information. Further, I do not consider the manager using the email "alerts" for "problem sites" for customer service purposes, or viewing the map a few times per day, to be an unreasonable manner of use. In my view, generating an alert that is triggered by established parameters, and viewing the map a few times during the workday, is materially different manner of use than continuously monitoring the Fleet Complete Information.

[59] I observe that TKE has refrained from implementing some uses of the Fleet Complete system to this point, in part due to the Union objections to using the GPS Information and these OIPC proceedings.<sup>43</sup>

[60] However, TKE submits that it is entitled to use the GPS Information for other uses, such as verifying attendance and payroll records, and for billing inquiries and potential litigation. TKE also plans to expand its "alert" system, stating that it may activate additional alerts, such as when a vehicle is speeding, idling or braking harshly. It also intends to input its clients' locations into its viewable map, and to have its dispatcher employees have access to the map for the purpose of assigning work and giving turn-by-turn directions to mechanics as required.

[61] I again note that none of the proposed uses of the Fleet Complete system involves continuous monitoring of the Fleet Complete Information, and that most of the near-real time uses of the information involves the information being brought to TKE's attention due to a triggering event. In this respect, it is reasonable for TKE to be able to verify the location of its employees' company vehicles while the employee is at work from time to time, and to use this location information (de-identifying the specific mechanic if providing the location information to customers) when billing inquiries and disputes arise. The use of email "alerts" that are triggered by use of a company vehicle outside of the fleet policy, such as if the vehicle is speeding, is also reasonable in my view, and I do not find the fact that TKE would look at this information near the time of its occurrence to be unreasonable. I also find that it is reasonable for TKE to enable its dispatchers to use the viewable map for dispatching purposes when dispatchers need to assign work. In reaching these conclusions regarding the manner in which TKE is using the information, particularly with respect to the viewable map, I consider the sensitivity of the information, and note that my view of the manner in which TKE is using the information may have been different if it was collecting, for example, video or audio information.

---

<sup>42</sup> In my view, the Fleet Complete Information is not particularly time sensitive to the employees because whether an employer views the information in near-real time or a week (or month) later, the potential consequence to the employee (*i.e.*, discipline) is unlikely to significantly vary based on when the employer views the information.

<sup>43</sup> Affidavit of J. Kerr, at paras. 90 and 91.



➤ *Availability of less privacy-intrusive alternatives*

[62] The complainant submits that TKE has shown no pressing need for the Fleet Complete system compared to TKE's historical, less privacy-intrusive, methods of managing the employment relationship. He submits that TKE did not have demonstrable problems with vehicle use or employee performance, and that its historical methods for monitoring employees are sufficient.

[63] TKE provided evidence of specific examples of problems with unauthorized use of company vehicles, such as employees driving the vehicles outside of work hours, employees failing to complete proper vehicle maintenance (resulting in damage to vehicles), public complaints of employees operating vehicles in an unsafe manner, and litigation costs incurred due to unauthorized use of company vehicles.<sup>44</sup> TKE also submits that it is important for TKE to be able to accurately monitor the hours worked by mechanics because it pays mechanics and invoices clients by the hour, and states that it receives over 100 billing inquiries a month.<sup>45</sup>

[64] I am persuaded that TKE will be able to better achieve its objectives concerning such matters as employee attendance verification and safe driving by using the Fleet Complete system compared to its historical methods that did not have GPS capabilities or collect vehicle operation information. Further, the complainant did not identify another alternative, less intrusive system that will satisfy TKE's objectives, other than the historical system. I am therefore not satisfied that there is a practical, apparent alternative that would fulfil the same objectives as the Fleet Complete system.

➤ *Offence to employees' dignity*

[65] The complainant submits that TKE did not engage in discussions with the Union regarding the introduction of the system, and argues that using Fleet Complete Information for employee performance management is an affront to employee dignity. He says the technology has had a serious, negative effect on employee morale, and a chilling effect on the employment relationships between TKE management and employees. The complainant views this system to be continuous electronic surveillance.<sup>46</sup>

[66] TKE is not continuously monitoring the Fleet Complete Information. TKE intends to, for example, collect vehicle GPS Information for weekly Reports, occasionally observe the GPS map, and for vehicle dispatching. Further, the situation is different than conducting video surveillance of an employee, particularly because information

---

<sup>44</sup> Affidavit of R. Wilson, at para. 5; Affidavit of W. Price, at paras. 3 to 9.

<sup>45</sup> Affidavit of R. Wilson, at para. 4; TKE's reply submissions, at paras. 17 to 19. The billing enquiries are for the geographic area from British Columbia to Thunder Bay, Ontario.

<sup>46</sup> Complainant submissions, at para. 112.

about the location of an employee's vehicle to a "street address level", and how the employee is operating the vehicle, is less sensitive than video footage.<sup>47</sup> As stated in Order P12-01, there is nothing particularly remarkable about a company monitoring the hours worked by an employee, or the use of company property.<sup>48</sup> TKE has a mobile workforce, and it is using the Fleet Complete system to alert it to atypical employee activity that TKE would not otherwise know about. This in turn allows TKE to make follow-up inquiries to determine whether the mechanic is meeting his or her employment obligations. I am not persuaded that TKE's use of the Fleet Complete system is an offence to the employees' dignity that tips the scales against TKE to preclude it from collecting and using the Fleet Complete Information.

➤ *Applying all the factors*

[67] Applying the above factors to TKE's collection and use of the Fleet Complete Information, I find that collecting and using the information is reasonably required for TKE to manage the employment relationship, and that a reasonable person would consider it appropriate in the circumstances for TKE to collect this information. Therefore, TKE is authorized to collect and use the Fleet Complete Information for the uses and purposes identified in this order under ss. 13 and 16 of PIPA, subject to my comments below regarding notice to the complainant.

***Sections 11 and 14 of PIPA***

[68] Sections 11 and 14 are limiting provisions regarding the collection and use of personal information. These provisions state that an organization may collect or use personal information for purposes that a reasonable person would consider appropriate in the circumstances, and that fulfill the purposes that the organization discloses under s. 10(1) or are otherwise permitted under PIPA. These sections do not place additional limits on collection and use of information beyond those I have already considered. Therefore, I find that ss. 11 and 14 have also been satisfied.

***Employee Notification***

[69] The complainant submits that TKE has breached s. 10(1)(a) of PIPA by failing to provide employees with proper notice of the Fleet Complete system prior to its installation in company vehicles. The complainant says that TKE has still not provided the required notice because it has not exhaustively and transparently declared the purposes for collecting the Fleet Complete Information, along with any limitations or restrictions on access, use, or retention of the Fleet Complete Information. Section 10 applies to personal information collected directly "from" the individual in consensual collection situations. TKE is neither collecting the information from its employees nor did it obtain consent, so s. 10 does not apply.

---

<sup>47</sup> [2012] B.C.I.P.C.D. No. 25, at para 164.

<sup>48</sup> [2012] B.C.I.P.C.D. No. 25, at para 164.

[70] However, ss. 13(3) and 16(3) do impose notice requirements for collecting and using employee personal information without consent, and apply to the substance of the complainant's argument regarding notice. Section 13(3), for example, states:

13(3) An organization must notify an individual that it will be collecting employee personal information about the individual and the purposes for the collection before the organization collects the employee personal information without the consent of the individual.

[71] Section 16(3) expresses the same requirement for notice of the use of employee personal information. TKE was therefore required to give notice to the complainant before it started collecting or using the complainant's Fleet Complete Information.

[72] In July 2010, TKE started installing Fleet Complete devices into company vehicles. However, the parties do not specifically identify when TKE started collecting the Fleet Complete Information, or when the Fleet Complete device was installed in the vehicle driven by the complainant.<sup>49</sup>

[73] It is clear that TKE was collecting and using the complainant's Fleet Complete Information by January 27, 2011, when it started using the Fleet Complete system in its operations. By this date, the Fleet Complete device had been installed in the complainant's vehicle, and the complainant knew that the device was for some kind of GPS technology.

[74] TKE had also held several meetings for employees at which TKE managers read aloud from a September 27, 2010 general privacy policy ("Privacy Policy"), and its vehicle fleet policy. TKE also distributed some written copies of the Privacy Policy. TKE submits that this satisfied its notice obligations pursuant to ss. 13(3) and 16(3) of PIPA. TKE also submits that the complainant's January 17, 2011 amended complaint to the OIPC, proves that he was properly notified because the complaint states that the complainant understood that the Privacy Policy applies to TKE's collection and use of information from "GPS tracking devices", including to address employee performance.<sup>50</sup>

[75] The complainant submits that the Privacy Policy is insufficient notice because the Privacy Policy does not list all of the uses, purposes or restrictions regarding the Fleet Complete Information. The complainant cited PIPEDA Case Summary #351 in support of its position, a decision of the Privacy Commissioner of Canada that states:

...the purposes and uses of a particular technology should be precisely specified, and that technology should be restricted to its intended purposes.<sup>51</sup>

<sup>49</sup> Affidavit of J. Kerr, at para. 33, lists the Fleet Complete device installation dates for company vehicles at branch offices across British Columbia. September 15, 2010, is the date of the complainant's complaint to the OIPC stating that TKE had installed GPS tracking technology in his company vehicle.

<sup>50</sup> TKE's initial submissions, at para. 82.

<sup>51</sup> PIPEDA Case Summary #351, [2006] C.P.C.S.F. No. 28 (QL), at para. 31.

[76] As I stated in Order P13-01, ss. 13(3) and 16(3) require organizations to notify employees of the types of employee personal information to be collected or used with some degree of specificity. It requires TKE to provide meaningful notice so employees know what personal information is being collected, the uses for the personal information, and the purposes for collection and use.

[77] TKE was required to give the complainant more specific notice describing what personal information it was going to collect than merely the statement in the Privacy Policy, which says, “TKE collects personal information for purposes authorized or required by PIPA or other laws.” This amounts, reasonably viewed, to nothing more than a declaration that TKE would comply with the law. The objective of notice is to provide individuals with information about the kinds of personal information being collected, used or disclosed, and their purposes. This provides individuals with a level of knowledge that better informs their consent, or, where consent is not sought, to better inform them of the collection so they may exercise their rights under PIPA.

[78] Reasonably viewed, the ss. 13(3) and 16(3) notice requirements go further. They specifically contemplate notice to the individual of the “purposes for” the collection or use. The Legislature cannot have intended that a general statement that employee personal information would be collected and used for purposes allowed by law would meet this obligation.

[79] TKE is required to inform the complainant that it is going to collect the Fleet Complete Information before the information is collected. Further, it is insufficient for an organization to notify employees that it intends to collect and use their employee personal information for one purpose, when it will be in fact used for other purposes as well. TKE is required to notify the complainant of all of its uses and purposes for the Fleet Complete Information, such as reviewing its employees’ locations and multiple aspects of its employees’ operation of company vehicles. This is consistent with TKE’s own Privacy Policy, which states in part:

When TKE collects personal information about employees we will explain why we are doing so.

...

When personal information about an employee is to be used for a purpose not previously identified, TKE will identify the new purpose and obtain the employee’s consent unless the use is authorized or required by law.

[80] In addition to TKE notifying employees of its Privacy Policy and vehicle fleet policy at meetings, there is also evidence that some employees and Union

representatives received additional details about the Fleet Complete system.<sup>52</sup> However, the evidence on this aspect of the matter varies from regional office to regional office, and there is no evidence that the complainant received this additional notice. Therefore, I find that the complainant simply knew that TKE had installed GPS technology in his vehicle around the time of installation, and of the general Privacy Policy (and fleet policy) content, prior to January 27, 2011.

[81] In this case, the Privacy Policy is a general policy drafted to apply to all situations in which TKE collects and uses employee personal information. It does not specify what employee personal information is intended to be collected, and it lists some broad purposes for which it collects personal information from employees.<sup>53</sup> Reading the Privacy Policy to the complainant, without providing further details and context, is not sufficient notice under ss. 13(3) and 16(3) of PIPA.

[82] I am not satisfied that TKE notified the complainant that it is collecting most of the Engine Status Information (*i.e.*, about the operation of his vehicle for harsh breaking, rapid acceleration, whether the ignition is turned on or off, and when the complainant vehicle leaves a particular location). I also do not find the fact that the complainant deduced what provisions of the Privacy Policy likely apply to the Fleet Complete Information in his amended complaint to the OIPC, is proof that TKE provided the required notice to the complainant.

[83] TKE did not start using the Fleet Complete system for all of its stated purposes on January 27, 2011. It started using additional Fleet Complete system features such as to monitor employee speeding after January 27, 2011, and it provided subsequent notice to employees by way of a May 5, 2011 written notice to employees stating that, effectively immediately, TKE would monitor vehicle speeds and engine idling.<sup>54</sup>

[84] TKE has not persuaded me that it provided the required notice to the complainant under ss. 13(3) and 16(3) of PIPA, considering the absence of evidence describing what portions of the Privacy Policy the complainant was told apply to TKE's

---

<sup>52</sup> There is no mention of the Fleet Complete system or GPS in meeting minutes for privacy policy and fleet policy for the Burnaby office: Affidavit of R. Houston, at Exhibit "B", "C" and "D"; The Victoria meeting minutes states "GPS, official tracking coming soon": Affidavit of R. Marr, at Exhibit "B"; Many details were provided to employees at the Courtenay and Nanaimo meetings. However, it is unclear whether the attendees were told that TKE was using the Fleet Complete Information for employee attendance and payroll verification: Affidavit of R. Marr, at para. 30; A PowerPoint Presentation about Fleet Complete was shown at the Kelowna office to employees and a Union representative. There is no evidence or reason to infer that the complainant saw the PowerPoint Presentation: Affidavit of J. Kerr, at para. 87 and Exhibit "J".

<sup>53</sup> Affidavit of J. Kerr, at Exhibit "N". The Privacy Policy, for example, states that purposes of collecting personal information are to meet the requirements of medical, dental, insurance, or pension benefit providers. However, there is no suggestion in this inquiry that TKE intends to use the Fleet Complete Information for these purposes. If TKE was using the Fleet Complete Information for these purposes, this use would need to comply with ss. 13, 16 and 19 of PIPA.

<sup>54</sup> Affidavit of G. Heard, at Exhibit "C".

collection and use of the complainant's employee personal information.<sup>55</sup> I am not satisfied that TKE has adequately notified the complainant of the uses of the Fleet Complete Information or TKE's purpose for collection and use, except for vehicle speeds and engine idling. Therefore, based on the materials before me, I find that TKE has failed to provide the complainant with the notice required by ss. 13(3) and 16(3) of PIPA.

*Consequence of breach to ss. 13(3) and 16(3)*

[85] TKE submits that I only need to direct that it provide further and better notice to its employees if notice was insufficient. The complainant does not oppose this position, similarly submitting that "TKE's failure to comply with the notice provisions and section 5 can be remedied by ordering future compliance."<sup>56</sup> I agree with the parties that the appropriate remedy in the circumstances of this inquiry is to order TKE to provide proper notice, which I will set out at the conclusion of this order.

***TKE's Policies and Practices***

[86] Section 5 of PIPA states in part:

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,

...

(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).

[87] The complainant submits that TKE is not complying with ss. 5(a) and 5(c) of PIPA, particularly with respect to TKE's notice requirements. It submits that PIPA requires TKE to have a specific written Fleet Complete policy rather than just its general Privacy Policy.

[88] I have addressed the notice provisions above, and confirm my earlier finding that TKE is required to notify the complainant of all of its purposes for collecting and using the Fleet Complete Information. Section 5 requires TKE to make information about its policies and practices available on request, but s. 5 does not require TKE to provide the information in the form of a written Fleet Complete policy.<sup>57</sup> Notwithstanding this fact, I recommend that TKE create a specific written policy for the Fleet Complete system

---

<sup>55</sup> There are portions of the Privacy Policy that likely do not apply in the circumstances, and may not be permitted for use or disclosure under PIPA. The Privacy Policy, for example, states that TKE collects employee personal information "...to meet the requirements of benefits providers and pension standards requirements".

<sup>56</sup> TKE submissions, at para 132.

<sup>57</sup> Order P06-04, [2006] B.C.I.P.C.D. No. 35.

that states what information is collected, and sets out the purposes for which Fleet Complete Information may be collected, used or disclosed. This policy could then provide existing (and new) employees with a single, clear and continuing source of notice of TKE's purposes for the Fleet Complete system.

[89] Last, I turn to the issue of s. 5(c) of PIPA, which is whether TKE failed to make information about its policies and practices available on request, whether by written policy, letter or in another form.

[90] On July 27, 2010, the Union sent TKE a letter with a series of questions primarily relating to the Fleet Complete system, but also with general questions such as whether TKE has a general privacy policy or privacy officer.<sup>58</sup> This request was from the Union, but I am satisfied that this was also as a representative on behalf of the complainant.<sup>59</sup>

[91] TKE did not respond to the July 27, 2010 letter until September 24, 2010, after the complainant had complained to the OIPC. In my view, the September 24, 2010 letter does not answer the substance of the Union's questions, although TKE later provided additional information.

[92] While s. 5(c) of PIPA does not specify a deadline for how promptly organizations must "make information available on request", it is my view that requested information should be made available as promptly as practicable, certainly within a reasonable period of time as the circumstances allow. TKE was not required to provide detailed answers about all of the purposes of the Fleet Complete system in July 2010 when this initial request was sent because TKE was still deciding the uses and purposes. However, this did not relieve TKE of its obligation to answer general questions about TKE's policies and practices as requested in the July 27, 2010 letter.<sup>60</sup> I find that TKE failed to make the information available on request within a reasonable period of time as required by s. 5(c) of PIPA. However, I decline to make an order relating to this breach because TKE subsequently provided the information required by s. 5(c).

## CONCLUSION

[93] In summary, I have found that TKE is authorized to collect and use the Fleet Complete Information under PIPA for its stated purposes, except that it has failed to meet its ss. 13(3) and 16(3) notice requirements. I have also found that TKE failed to make information about its policies and practices available on request within the meaning of s. 5 of PIPA in 2010, but that no further order is required on this issue.

---

<sup>58</sup> Section 4 of PIPA requires organizations to designate one or more individuals to be responsible for ensuring that the organization complies with PIPA, and to make the designated individual's name and contact information available to the public.

<sup>59</sup> This letter was copied to the lawyer who is the complainant's lawyer in this inquiry, and TKE's failure to respond to this letter was cited in the complaint to the OIPC that gave rise to this inquiry.

<sup>60</sup> TKE's failure to make its privacy officer information available to the public, incidentally, is also a breach of s. 4 of PIPA.

---

[94] For the reasons given above, under s. 52 of PIPA:

1. I confirm that TKE is complying with the duties imposed by PIPA for TKE's collection and use of the Fleet Complete Information for its stated purposes under ss. 13(2)(b) and 16(2)(b) of PIPA, subject to meeting its ss. 13(3) and 16(3) notice requirements; and
2. I require TKE to stop collecting and using the Fleet Complete Information under s. 52(3)(e) by October 10, 2013 pursuant to s. 53 of PIPA because it failed to give notice as required by ss. 13(3) and 16(3) of PIPA, until:
  - a. TKE has delivered to me evidence that satisfies me that it is complying with ss. 13(3) and 16(3) of PIPA; and
  - b. I have confirmed in writing to TKE and to the complainant that I am satisfied TKE is complying with ss. 13(3) and 16(3) of PIPA.

August 28, 2013

**ORIGINAL SIGNED BY**

---

Ross Alexander  
Adjudicator

OIPC File No.: P10-44027