



Order P20-05

SURREY CREEP CATCHER

Celia Francis
Adjudicator

June 18, 2020

CanLII Cite: 2020 BCIPC 33
Quicklaw Cite: [2020] B.C.I.P.C.D. No. 33

Summary: Two individuals (the Complainants) complained that Surrey Creep Catcher (the Organization) posted videos of their encounters on the internet, without their consent, and requested that the Organization take down the videos. The Organization declined to do so or to destroy the videos containing the complainants' personal information. The adjudicator found that the Organization was not authorized to collect and disclose the Complainants' personal information and ordered it both to remove the videos from the internet and to destroy the Complainants' personal information.

Statutes Considered: *Personal Information Protection Act*, ss. 3(2)(b), 6, 7, 8, 10, 12, 18.

INTRODUCTION

[1] This order concerns complaints by two separate individuals (the Complainants) that Surrey Creep Catcher (the Organization) collected and disclosed their personal information contrary to the *Personal Information Protection Act* (PIPA). This order involves the same organization as Order P17-03¹ and has many similarities to that case.

[2] In this case, the Organization posted a separate video on its website of each complainant, accusing each of attempting to lure a minor for sexual purposes. The Complainants submitted separate complaints about the videos to the Office of the Information and Privacy Commissioner (OIPC).²

¹ Order P17-03, 2017 BCIPC 38 (CanLII).

² Investigator's Fact Reports, para. 1 of each. The Organization does not dispute that this is what occurred.

[3] During its investigation of the complaints, the OIPC asked the Organization, in light of what Order P17-03 said, to take down the videos from its website and to destroy all personal information that the Organization had collected about the Complainants. The Organization's president declined to remove the videos or destroy the personal information, saying he had a right as a journalist to post the videos.³

[4] The complaints were not resolved and they proceeded separately to inquiry. As the cases are similar and the issues the same, I have dealt with both inquiries in this order.

[5] The Organization's submissions to the two inquiries were extremely brief. Complainant 1 made a private (*in camera*) submission.⁴ Complainant 2 made a two-sentence submission.⁵

[6] The complaints, fact report and submissions indicate that the videos are still publicly available on the Organization's website. There is, at least, no evidence that they are not.

ISSUES

[7] As set out in the Notice for this inquiry, the issues to be decided here are whether:

1. The Organization is an "organization" as defined by s. 1 of PIPA.
2. The Organization's collection and disclosure of personal information falls under s. 3(2)(b) of PIPA.
3. Section 6 of PIPA authorized the Organization to collect and disclose the complainants' personal information.

DISCUSSION

Background

[8] The submissions did not describe the Organization's mandate or activities. However, according to Order P17-03, the Organization is a

...branch or chapter of an association that purports to protect children by finding and confronting potential pedophiles or child predators, whom it calls 'creeps.' Its operations frequently involve video-recording the confrontation and subsequently disseminating the video on social media."

...

³ Investigator's Fact Reports, paras. 2 and 3 of each.

⁴ OIPC File P18-76996.

⁵ OIPC File P18-75387.

...the members of the Organization pose under the name of a fictitious person, or decoy, looking for social engagement with potential “creeps” online. After an individual responds, the decoy represents himself or herself as underage and arranges to meet the individual, usually in a public place, where members of the Organization confront the individual and video-record the encounter. The Organization then posts on the internet the video of the encounter and encourages its members and supporters to share the video on social media.⁶

Are the video images “personal information”?

[9] PIPA governs the collection, use and disclosure of “personal information” by organizations.⁷ Under s. 1 of PIPA, “personal information” means information about an identifiable individual.

[10] The parties did not provide me with copies of the videos at issue. However, I have decided that it does not matter that I have not seen the videos. I accept the Complainants’ evidence that the Organization video-recorded the Complainants’ encounters with the Organization’s members, that the videos are online and that the videos contain the Complainants’ names and images. The Organization does not dispute these things. The parties also did not dispute what was in the Fact Report on this point.

[11] The OIPC has confirmed on several occasions that an individual’s image in a video recording is information about an identifiable individual and, thus, is that individual’s “personal information”.⁸ I find, therefore, that the information at issue is “personal information” under PIPA and that the Organization collected and disclosed that personal information. Two threshold issues arise, however. The first is whether “Surrey Creep Catcher” is an “organization” under PIPA. The second is whether, although I have found as a fact that it collected and disclosed “personal information”, PIPA applies at all to those actions.

Is Surrey Creep Catcher an “organization”?

[12] Under s. 1 of PIPA, an “organization” includes “a person, an unincorporated association, a trade union, a trust or a not for profit organization,” but does not include (among other things) “an individual acting in a personal or domestic capacity.”

[13] In Order P17-03, the Acting Commissioner concluded that the Organization was an “unincorporated association” and thus an “organization” under PIPA, including because its members are united by their objectives

⁶ Order P17-03, at paras. 1 and 5, footnote in para. 5 omitted.

⁷ Section 2.

⁸ See Order P09-02, 2009 CanLII 67292 (BC IPC), at para. 60, and P20-04, 2020 BCIPC 24 (CanLII) at para. 29 for example.

(“to identify, confront and publicly name individuals whom they believe to be luring minors”) and “bound by mutual undertakings, duties and obligations”. The Acting Commissioner also noted that the Organization has a president, who has control of the Organization’s funds and who “manages money earned from the sale of branded merchandise” and from funds raised by donations, which he spends on operational costs. He said that these activities may also make the Organization a “commercial enterprise”.⁹

[14] I infer from the material before me that the Organization was acting in accordance with the objectives described in the previous paragraph at the time the videos were posted. Nothing indicates that the Organization’s objectives or purposes have altered since Order P17-03 was issued. There is certainly no evidence that the Organization or its president was acting in a personal or domestic capacity. I am satisfied that the Organization is an “organization” under PIPA.

Collection or disclosure for a journalistic purpose – s. 3(2)(b)

[15] The purpose of PIPA is to govern the collection, use and disclosure of personal information by organizations. However, PIPA does not apply in some circumstances, as set out in s. 3(2).

[16] The Organization’s president said “I am not an organization I am a journalist.”¹⁰ He also said the OIPC is “wrong and I will see you in court”.¹¹ I take the Organization’s president to mean that, in his view, under s. 3(2)(b), PIPA does not apply to the Organization because it was carrying out the particular collection and disclosure of the Complainants’ personal information at issue here for journalistic purposes and for no other purpose.

[17] Section 3(2)(b) reads as follows:

3(2) This Act does not apply to the following:

...

(b) the collection, use or disclosure of personal information, if the collection, use or disclosure is for journalistic, artistic or literary purposes and for no other purpose;

...

⁹ Order P17-03, at paras. 28-34, with reference to Order P06-01, 2006 CanLII 13537 (BC IPC) at paras. 17-18, in which former Commissioner Loukidelis indicated that, while an entity need not be carrying out a commercial activity in order to be an “organization” under PIPA, an individual carrying out a commercial activity will not be considered to be acting in a personal or domestic capacity.

¹⁰ Organization’s email of November 9, 2019, regarding OIPC File P18-76996.

¹¹ Organization’s email of December 19, 2019, regarding OIPC File P18-75387.

[18] The Organization’s president did not explain why he thinks that the Organization’s activities fall under s. 3(2)(b). However, I note the Organization’s views on this issue as expressed in Order P17-03:

The Organization submits that journalism is the production and distribution of reports on the interaction of events, facts, ideas and people that are news of the day, and that inform the public. It also submits that it collects the personal information of individuals, such as the Complainants, for the purposes of identifying them at the agreed meeting place, and of making the public aware of their identities through “journalistic interviews,” during which the interviewee may leave at any time. It notes that many people watch the live-stream interviews, which it archives for review. The Organization indicates that its intention is to bring light to the overwhelming amount of adults luring minors on the internet for sexual purposes. It says that its purpose is to inform the public about child predators who are active in their neighbourhood.¹²

[19] The Acting Commissioner used three criteria for determining whether an organization is carrying out its activities for a journalistic purpose under s. 3(2)(b) of PIPA. An activity would qualify as journalism only (1) where its purpose is to inform the community on issues the community values, (2) where it involves an element of original production and (3) where it involves a “self-conscious discipline calculated to provide an accurate and fair description of facts, opinion and debate at play within a situation”.¹³ The Acting Commissioner found that s. 3(2)(b) did not apply, as the Organization’s activities did not meet the third criterion, so he did not find it necessary to consider the first two criteria.¹⁴

[20] The Acting Commissioner said in Order P17-03, and I agree, that not every posting on the internet is journalism.¹⁵ In this case, there is no evidence that the Organization made any effort to present the complainants’ points of view when posting the videos, to provide any commentary or analysis or to provide “an accurate and fair description of facts, opinion and debate at play within a situation”. In any case, even if the Organization’s actions in this case included a genuine “journalistic purpose” for collecting and disclosing the Complainants’ personal information, under s. 3(2)(b), the collection and disclosure must be for that purpose and no other.

[21] The material before me here supports the conclusion that at least one of the Organization’s purposes in posting the videos was to impose negative consequences on the Complainants. Indeed, Complainant 1’s *in camera* submission indicates that he has suffered negative consequences from the

¹² Order P17-03, at para. 15.

¹³ Order P17-03, at para. 18, with reference to *A.T. v. Globe24h.com*, 2017 FC 114 (CanLII) at para. 68.

¹⁴ Order P17-03, at para. 20.

¹⁵ Order P17-03, at para. 23.

Organization's posting of the video of his encounter with the Organization. Complainant 2 stated that he "at no time thought the entity was younger than legal age" and that he "never offered sex money drugs or acted in a sinful manner."¹⁶

[22] For these reasons, I find that s. 3(2)(b) does not apply here. This means that PIPA applies.

Does s. 6 authorize the collection and disclosure of the personal information?

[23] Section 6 of PIPA states that an organization must not collect, use or disclose an individual's personal information, unless the individual consents to the collection, use or disclosure, the individual is deemed to have consented or PIPA allows it without consent.

Consent required

6 (1) An organization must not

- (a) collect personal information about an individual,
- (b) use personal information about an individual, or
- (c) disclose personal information about an individual.

(2) Subsection (1) does not apply if

- (a) the individual gives consent to the collection, use or disclosure,
- (b) this Act authorizes the collection, use or disclosure without the consent of the individual, or
- (c) this Act deems the collection, use or disclosure to be consented to by the individual.

Was there explicit or deemed consent?

[24] Section 7(1) of PIPA states that an individual has not given consent unless the organization has provided the individual with the information required under s. 10(1), which includes explaining the purpose for the collection. Section 8(1) provides an exception, in allowing for deemed or implicit consent: where the purpose for collection would be considered to be obvious to a reasonable person; and the individual voluntarily provides the personal information for that purpose.

¹⁶ Complainant 2's submission of February 18, 2020.

[25] The relevant parts of ss. 7 to 10 of PIPA read as follows:

Provision of consent

7 (1) An individual has not given consent under this Act to an organization unless

(a) the organization has provided the individual with the information required under section 10 (1), and

(b) the individual's consent is provided in accordance with this Act.

...

(3) If an organization attempts to obtain consent for collecting, using or disclosing personal information by

(a) providing false or misleading information respecting the collection, use or disclosure of the information, or

(b) using deceptive or misleading practices

any consent provided in those circumstances is not validly given.

Implicit consent

8 (1) An individual is deemed to consent to the collection, use or disclosure of personal information by an organization for a purpose if

(a) at the time the consent is deemed to be given, the purpose would be considered to be obvious to a reasonable person, and

(b) the individual voluntarily provides the personal information to the organization for that purpose.

...

Required notification for collection of personal information

10 (1) On or before collecting personal information about an individual from the individual, an organization must disclose to the individual verbally or in writing

(a) the purposes for the collection of the information, and

(b) on request by the individual, the position name or title and the contact information for an officer or employee of the

organization who is able to answer the individual's questions about the collection.

...

(3) This section does not apply to a collection described in section 8 (1) or (2).

[26] The Complainants' complaints and submissions show that they did not explicitly consent under s. 7(1) to the collection or disclosure of their personal information. On the contrary, the Complainants' submissions persuade me that they were tricked or misled into their encounters with the Organization, that they were not given an opportunity to consent and did not participate voluntarily in the video-recording of these encounters. This suggests that, under s. 7(3), any consent to meet the Organization's members was not validly given. There is, moreover, no evidence that the Organization gave the Complainants the required notice under s. 10(1).

[27] There is also no evidence, and the Organization did not argue, that the complainants were deemed to have consented under s. 8(1) of PIPA to the collection and disclosure of their personal information. For example, there is no evidence that the Complainants voluntarily provided their personal information for a purpose that would be considered obvious to a reasonable person.

Were collection and disclosure allowed without consent?

[28] Sections 12 and 18 of PIPA allow organizations to collect and disclose personal information without consent in a number of circumstances, for example, where the collection and disclosure were required or authorized by law (s. 12(1)(h) and s. 18(1)(h)). The Organization did not argue, nor is there any evidence, that PIPA allowed the Organization to collect and disclose the Complainants' personal information without consent under ss. 12 and 18. Accordingly, the only issue is, as stated in the notice of inquiry, whether the Organization collected and disclosed the personal information in compliance with s. 6 of PIPA.

CONCLUSION

[29] For the reasons given above, I find that s. 6 of PIPA did not authorize the collection and disclosure of the Complainants' personal information by the Organization.

[30] Under s. 52(3)(e), I require the Organization to stop collecting or disclosing any of the Complainants' personal information. Under s. 52(3)(f), I also require the Organization to destroy all of the Complainants' personal information at issue that is in the Organization's control.

[31] Section 53(1) of PIPA requires the Organization to comply with the orders in the previous paragraph by no later than July 31, 2020. As a condition under s. 52(4) of PIPA, I require the Organization to provide the OIPC Registrar with written evidence of its compliance with the above orders by July 31, 2020.

June 18, 2020

ORIGINAL SIGNED BY

Celia Francis, Adjudicator

OIPC File No.: P18-75387
P18-76996