



Order P22-08

BELLEVUE WEST BUILDING MANAGEMENT LTD.

Jay Fedorak
Adjudicator

December 16, 2022

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Summary: A resident and shareholder of a company-owned apartment building complained that the company was contravening s. 6 of the *Personal Information Protection Act* (PIPA) by inappropriately collecting and using her personal information that it obtained through its video surveillance system. The adjudicator concluded the company was not authorized under PIPA to collect the personal information of the complainant through its video surveillance system. The adjudicator required the company to stop collecting the personal information of the complainant through its video surveillance system.

Statutes Considered: *Personal Information Protection Act*, SBC 2003 c 63; *Business Corporation Act* SBC 2002 c 57; *Interpretation Act* RSBC 1996 c 238.

INTRODUCTION

[1] A co-owner of an apartment building (complainant) complained to the Office of the Information and Privacy Commissioner (OIPC) that Bellevue West Building Management Ltd. (Bellevue), the company the co-owners created to manage the building, had collected and used her personal information contrary to s. 6 of the *Personal Information Protection Act* (PIPA). The information at issue consisted of images of her that a video surveillance system had captured.

[2] Mediation did not resolve the matter and the complainant requested that it proceed to an inquiry.

ISSUES

[3] The issues to be decided in this inquiry are:

1. Whether s. 6 of PIPA authorizes Bellevue to collect the personal information of the complainant through its video surveillance system; and
2. Whether s. 6 of PIPA authorizes Bellevue to use the personal information of the complainant collected through its video surveillance system.

[4] PIPA does not set out a burden of proof in an inquiry into issues about the collection and use of personal information. Past orders have said that, in such cases, it is in the interests of the parties to provide argument and evidence in support of their positions.¹ Therefore, each party should provide information and arguments to justify its position on the issue.

DISCUSSION

[5] **Background** – The complainant is one of several owners of a residential apartment building in West Vancouver. The owners incorporated Bellevue West Building Management Ltd. (Bellevue) to coordinate and regulate their use and enjoyment of their respective interests in the building. The complainant resides in the building.

[6] Bellevue is governed by the *Business Corporation Act* (BCA). It is not subject to the *Strata Property Act* (SPA).² Bellevue is run by a management committee that includes owners elected at an annual general meeting.

[7] Sometime between 2007 and 2008, the management committee installed a video surveillance system in response to a few instances of break ins, attempted break ins and minor property damage. There currently are ten cameras in operation. Two are located in the lobby: one directed at the outside door and the other at the lobby area. There are five in the parkade aimed at entrance doors and the garbage storage. There are three in the basement: the bike room, the laundry room and the hallway to the elevator.

Does s. 6 of PIPA authorize Bellevue to collect the personal information of the complainant through its video surveillance system?

[8] The relevant provision reads as follows:

- 6** (1) An organization must not
- (a) collect personal information about an individual,

¹ Order P22-05, 2022 BCIPC 49 (CanLII), para 14; Order P21-06, 2021 BCIPC 35 (CanLII), para. 17; Order P09-02, 2009 BCIPC 67292 (CanLII), para. 4.

² *Strata Property Act* SBC 1998 c. 43.

- (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.

[9] To determine whether s. 6(2)(a) applies, it is necessary to consider ss. 7(1), and 10. The relevant provisions read as follows:

- 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.
- 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).

[10] To determine whether s. 6(2)(b) applies, it also is necessary to consider ss. 11 and 12(1). The relevant provisions read as follows:

- 11** Subject to this Act, an organization may collect personal information only for purposes that a reasonable person would consider appropriate in the circumstances and that
- (a) fulfill the purposes that the organization discloses under section 10 (1), or
 - (b) are otherwise permitted under this Act.

- 12** (1) An organization may collect personal information about an individual without consent or from a source other than the individual, if

...

- (c) it is reasonable to expect that the collection with the consent of the individual would compromise the availability or the accuracy of the personal information and the collection is reasonable for an investigation or a proceeding,

...

- (h) the collection is required or authorized by law,

- (j) the personal information is necessary to facilitate

- (i) the collection of a debt owed to the organization

...

[11] To determine whether s. 6(2)(c) applies, it is necessary to consider s. 8. The relevant parts of that provision read as follows:

- 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.

...

- (3) An organization may collect, use or disclose personal information about an individual for specified purposes if

- (a) the organization provides the individual with a notice, in a form the individual can reasonably be considered to understand, that it intends to collect, use or disclose the individual's personal information for those purposes,

- (b) the organization gives the individual a reasonable opportunity to decline within a reasonable time to have his or her personal information collected, used or disclosed for those purposes,

- (c) the individual does not decline, within the time allowed under paragraph (b), the proposed collection, use or disclosure, and

(d) the collection, use or disclosure of personal information is reasonable having regard to the sensitivity of the personal information in the circumstances.

(4) Subsection (1) does not authorize an organization to collect, use or disclose personal information for a different purpose than the purpose to which that subsection applies.

[12] Bellevue submits that its implementation of the video surveillance system to collect personal information, including that of the complainant, complies with all three provisions of s. 6(2). I will address each in turn.

[13] **Collection of Personal Information with Consent s. 6(2)(a)** – This provision applies where an individual gives consent to the collection of their personal information. Giving consent differs from having been “deemed” to have consented, and PIPA deals with these two types of consent differently. PIPA does not define “deemed”. Dictionary definitions of the verb “to deem” include to assume, consider, judge, think.³ Qualifying the term “consent” with “deemed”, reduces the level of certainty, with respect to whether the individual has actually given their consent. Whether someone is deemed to have consented is an opinion or conclusion, rather than a fact. Therefore, it is reasonable to conclude that a statutory requirement for an individual to give consent (as opposed to having been deemed to have consented) renders it necessary for there to be corroborating proof that the individual has consented. This usually takes the form of a signed statement, a verbal affirmation, a checked box on an online form, a gesture such as a raised hand in response to a question, etc. There must be a definitive and unambiguous demonstration of consent from the individual.

[14] With respect to s. 6(2)(a), Bellevue asserts that the complainant has consented to the collection of her personal information. It argues that by posting signs concerning the use of the video surveillance system and providing the complainant with a copy of its Privacy Policy (included in the minutes of the Annual General Meeting of 2021), it has met the requirements of ss. 10(1) and 7(1)(a). It submits that, as the complainant had the opportunity to read the Privacy Policy and the signs, she has consented to the collection of her personal information whenever she entered a space subject to the video surveillance.⁴

[15] The provisions in s. 7(1) stipulate a two-part test for determining whether an individual has given their consent under s. 6(2)(a). The first part of the test, s. 7(1)(a), requires an organization to provide an individual with notification under s. 10(1) of the purpose of collection of their personal information before any consent they may provide would qualify as valid. The second part of the test

³ See for example, the Oxford Canadian Dictionary.

⁴ Bellevue’s response submission, paras. 34-36.

requires that the individual subsequently provides their consent in accordance with PIPA.

[16] Section 6(2)(a) applies where an individual provides consent through a definitive and unambiguous expression of their willingness to permit the organization to collect their personal information.

[17] The circumstances where an individual is deemed to have consented are subject to s. 6(2)(c). These involve circumstances where the purpose of the collection of the personal information is obvious, and the individual willingly provides their personal information. I will deal with s. 6(2)(c) below.⁵

[18] Through its Privacy Policy, Bellevue has provided notice that it has installed video surveillance cameras and indicated the purposes that those cameras serve. I find that this satisfies the notification requirements in s. 10(1) and the first part of the test for s. 7(1). Bellevue submits that it also posted signs in the areas under video surveillance indicating that their purpose was to prevent theft, but that the complainant removed them. Therefore, my understanding is that the signs are no longer present, owing to unforeseen circumstances beyond the control of Bellevue. Given that the signs are no longer in place, and that Bellevue has not submitted to this inquiry the text it used on the signs, I am unable to confirm that the posting of the signs has met the requirements of s. 10(1) and 7(1). Nevertheless, the issuing of the Privacy Policy to the complainant satisfies the requirements for providing notice of collection to her.

[19] The second part of the test requires the complainant to provide her consent in accordance with PIPA. Bellevue submits that the complainant provided her consent by the following means:

The Complainant had the opportunity to read the Privacy Policy as well as the sign posted and then decide whether to enter the common areas. She consented to the collection and use of her personal information in accordance with section 6(2)(a) of PIPA. The sign posted afforded her the opportunity to not enter the area in camera view if she did not wish to have her image recorded. The consent requirements under sections 6(2)(a) and 7(1) of PIPA are satisfied. The Complainant also consented to the collection, use and disclosure pursuant to section 7(1)(b) of PIPA by continuing to use the common areas.⁶

[20] The complainant responds that it is invalid to assume that, by using common spaces, she consents to the collection of her personal information. She asserts that she cannot access her suite without entering the lobby area, which is subject to the video surveillance.⁷ As she does not have an in-suite washer and

⁵ See paras. 42-46.

⁶ Bellevue's response submission, para. 35.

⁷ Complainant's reply submission, unnumbered page.

dryer, she has no choice but to use the communal laundry room, which is also subject to surveillance. In essence, short of selling her shares and moving out of the building, she is unable to avoid the cameras and suffers surveillance not by choice but under duress.

[21] Inherent in the concept of consent is the element of choice. For an individual to provide valid consent, or deemed consent, they must have a realistic option of declining. Consent must be voluntary. Individuals must genuinely agree to the collection of their personal information or have the ability to act in a way that avoids the collection of their personal information. In this case, the complainant cannot access her suite or the laundry facilities without having her images captured. She has never provided a positive indication of her willingness to permit Bellevue to collect her personal information through the video surveillance system. She submits that she has made clear her objections to such collection, including through written communications, since 2017 when she discovered that PIPA governed the collection of personal information. In 2020, she explicitly informed Bellevue in writing that she does not consent to this collection of her personal information.⁸

[22] I conclude that the fact she may have entered a room that she knew to be under video surveillance is not a definitive and unambiguous indication of her consent in this case, especially given the context provided about her express lack of consent.

[23] Therefore, I find that the complainant has not given consent to the collection of her personal information through video cameras and, consequently, s. 6(2)(a) does not apply.

[24] **Authorization to collect personal information without consent s. 6.(2)(b)** – Bellevue argues that it is authorized to collect the personal information of the complainant through video cameras without her consent. It cites ss. 12(1)(c), (h) and (j)(i) as applicable in this case.

Section 12(1)(c)

[25] Bellevue argues that it is authorized under s. 12(1)(c) to collect the complainant's personal information without her consent because obtaining her consent would compromise the availability or accuracy of the information, which was required for an investigation.⁹ Bellevue alleges that the video cameras have collected evidence that the complainant contravened the Owners Rules and

⁸ Complainant's initial submission, Exhibit 3a, excerpt of email to Tribe Management Inc, 3 February 2020.

⁹ Bellevue's response submission, para. 43.

Regulations and damaged areas of the building. It asserts that this justifies the collection of her personal information under s. 12(1)(c).

[26] I note that this argument contradicts Bellevue's earlier submission that it has notified her about the collection of her personal information and obtained her consent. If it had indeed notified her about the existence of the camera, it is inconsistent to argue that obtaining her consent would have compromised the availability and accuracy of her personal information. For s. 12(1)(c) to apply, the complainant would have to have been unaware that the video cameras were collecting her personal information.

[27] It is important to note that this provision would only apply in a case where an organization uses video cameras surreptitiously. It relates to circumstances where a suspected individual would likely change their behaviour, if they knew they were being recorded. This provision does not apply where there is yet no probable cause to commence an investigation. Nor does it apply where the individual is aware of the collection of their personal information, as was the case here. With the posting of signs and the dissemination of the Privacy Policy, it is clear that the complainant would be aware of the collection of her personal information through video cameras.

[28] Therefore, I find that s. 12(1)(c) does not authorize Bellevue to collect the personal information of the complainant without her consent.

Section 12(1)(h)

[29] Bellevue submits that the collection of personal information with the video cameras is authorized by the Privacy Policy it approved at the Bellevue Annual General Meeting of July 6, 2021,¹⁰ which it argues qualifies as a "law" for the purposes of s. 12(1)(h).¹¹ It states that previous orders have noted that PIPA does not define "law" and have relied on the definition of "enactment" in the *Interpretation Act*.¹² The *Interpretation Act* stipulates an "enactment" includes a "regulation", which in turn is defined to include a "rule, form ... bylaw or other instrument enacted in execution of a power conferred under an Act". Bellevue points to s. 12 of the BCA as its authority for making rules. Section 12 stipulates a company "must have articles that set rules for its conduct". Bellevue asserts that its new Privacy Policy qualifies as a rule enacted in accordance with s. 12 of the BCA.

[30] I accept that the definitions of "enactment" and "regulation" in the *Interpretation Act* apply with respect to laws for the purpose of s. 12(1)(h).

¹⁰ Bellevue's response submission, Exhibit K, pp. 9-12.

¹¹ Bellevue's response submission, paras. 40-2.

¹² *Interpretation Act* RSBC 1996 c 238.

[31] For s. 12(1)(h) to apply in this case, Bellevue must establish that the provisions in its Privacy Policy, as part of the Schedule of Rules and Regulations of the Owner Agreement, relating to the installation of video surveillance, qualify as rules enacted in execution of a power conferred under an Act.

[32] Bellevue must demonstrate that the passages in its Privacy Policy that deal with its video cameras form part of its articles setting out the rules for its conduct, in accordance with s. 12 of the BCA.

[33] The only evidence before me is a copy of the minutes of the Annual General Meeting of 6 July 2021 of the Bellevue West Building Management. It includes a description of a Special Resolution to approve the addition of new articles to the Schedule of Rules and Regulations of the Owner Agreement, namely “Part 7 – Privacy Policy, Sections 20.1 - 21.8.” Section 21.1 reads as follows:

The Corporation installed video surveillance in common areas of the building for the purpose of collecting data from such systems.¹³

[34] This statement does not appear to me to be a rule governing the conduct of the company. Moreover, Bellevue has not established that a statement that it has installed video surveillance cameras falls within the scope of rules governing the conduct of a company, as contemplated in s. 12 of the BCA. This provision of the BCA reads as follows:

- 12** (1) A company must have articles that
- (a) set rules for its conduct,
 - (b) are mechanically or electronically produced, and
 - (c) are divided into consecutively numbered or lettered paragraphs.
- (2) The articles of a company must
- (a) set out every restriction, if any, on
 - (i) the businesses that may be carried on by the company, and
 - (ii) the powers that the company may exercise,
 - (b) set out, for each class and series of shares, all of the special rights or restrictions that are attached to the shares of that class or series of shares,
 - (c) subject to subsection (5),
 - (i) set out the incorporation number of the company,

¹³ Complainant's initial submission, exhibit 5a, p.11.

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- (ii) set out the name of the company, and
 - (iii) set out, in the prescribed manner, any translation of the company's name that the company intends to use outside Canada.
 - (3) Without limiting subsections (1) and (2), the first set of articles of a company incorporated under this Act must
 - (a) have a signature line with the full name of each incorporator set out legibly under the signature line, and
 - (b) be signed on the applicable signature line by each incorporator.
 - (4) Without limiting subsections (1) and (2), a company may, in its articles, adopt, by reference or by restatement, with or without alteration, all or any of the provisions of Table 1 and, in that case, those adopted provisions form part of the articles.
 - (5) After the recognition of a company, any individual may insert in the company's articles, whether or not there has been any resolution to direct or authorize that insertion,
 - (a) the incorporation number of the company, and
 - (b) the name and any translation of the name of the company.
 - (6) Despite any wording to the contrary in a security agreement or other record, a change to a company's articles in accordance with subsection (5) does not constitute a breach or contravention of, or a default under, the security agreement or other record, and is deemed for the purposes of the security agreement or other record not to be an alteration to the charter of the company.

[35] I note that s. 4 of the BCA refers to Table 1, which is the model set of articles that the Lieutenant Governor in Counsel issued in a regulation to the BCA for companies as a template. These model articles indicate the type of subject matter of the rules governing the conduct of companies that the BCA envisions. These articles relate to the following aspects of administering a company:

- Shares and share certificates;
- The issue, purchase and transfers of shares;
- Borrowing powers;
- General meetings;
- Proceedings at meetings of shareholders;
- Voting of shareholders;
- Election and removal of directors;
- Proceedings of directors;

- Committees of directors;
- Officers;
- Disclosure of interests of directors;
- Indemnification;
- Dividends;
- Accounting records;
- Execution of instruments under seal; and
- Notices.

[36] The subject matter of these articles relates to the constitutional governance of the company and the procedures required to facilitate that governance. The Privacy Policy in the Schedule of Rules and Regulations of the Owners Agreement does appear to be within the scope of articles as contemplated under the BCA. There is nothing in the Table 1 model articles that resembles anything with respect to the manner of the physical security of company assets or that otherwise indicates that this would be suitable for inclusion in an article. I do not find it reasonable to conclude that the installation of video surveillance cameras falls within the categories of rules that may be subject to s. 12 of the BCA.

[37] It is also important to note that the Privacy Policy does not explicitly require or authorize the collection of personal information through video surveillance. It merely itemizes the kind of personal information that Bellevue will collect generally for purposes of managing the company. It also provides notice of some security measures Bellevue has implemented. The Privacy Policy provides notice that Bellevue has installed security cameras to identify intruders; to prevent theft and damage to property or injury to persons; and to enforce articles and rules relating to security and safety. There is no explicit indication in the Privacy Policy that it constitutes the authority under law to collect personal information of owners for those purposes.

[38] Therefore, I find that s. 12(1)(h) of PIPA does not authorize Bellevue to collect the complainant's personal information through video cameras without her consent.

Section 12(1)(j)(i)

[39] Bellevue also submits that the collection of personal information of the complainant is necessary for the collection of a debt that the complainant owes Bellevue, in accordance with s. 12(j)(i). It argues that the video cameras captured footage providing sufficient evidence to establish that the complainant

contravened the Owner's Rules and Regulations and justified the imposing of a fine.¹⁴

[40] Bellevue demonstrates a misunderstanding of the purpose of this provision, which is to assist an organization with collecting an outstanding debt. It relates to the process of facilitating the collection of the funds already owed. It is not for the purpose of finding opportunities to impose new monetary penalties.

[41] Therefore, I find that s. 12(j)(i) does not authorize Bellevue to collect the personal information of the complainant without consent.

Conclusion on s. 6(2)(b)

[42] I find that s. 6(2)(b) does not authorize Bellevue to collect, through its video surveillance system, the personal information of the complainant without her consent.

[43] **Collection of personal information with deemed consent s. 6(2)(c) –** In the absence of obtaining consent of the individual, an organization may collect the personal information of an individual if the individual is deemed to have consented to that collection. I explained the distinction between consent and deemed consent above.¹⁵

[44] Bellevue submits that the complainant is deemed to have consented to the collection of her personal information through the video cameras. It provides similar arguments in support of the application of s. 6(2)(c) that it used in support of s. 6(2)(a).

[45] Here Bellevue cites s. 8(1), asserting it would be evident to any reasonable person and that the complainant is deemed to have consented to the collection of her personal information because she voluntarily provided the information. Bellevue argues that, given her knowledge of the break-ins and vandalism that had occurred, combined with having received notice of collection through the Privacy Policy, it would have been obvious to her that video cameras were collecting personal information to promote the protection of property and personal safety.¹⁶ It concludes that the combination of the notice it provided to her and her subsequent actions indicate that she provided implicit or deemed consent to the collection of her personal information through the video surveillance cameras.

The Complainant's continued use of common property with the knowledge of the terms of the Privacy Policy and the location of the security cameras,

¹⁴ Bellevue's response submission, paras. 44 and 46.

¹⁵ See para. 12.

¹⁶ Bellevue's response submission, paras, 47-8.

indicates the Complainant's deemed consent to have her likeness recorded.¹⁷

[46] As I noted above with respect to the application of s. 6(2)(a), the complainant responds that it is invalid to assume that, by using common spaces, she should be deemed to have consented to the collection of her personal information. In her current circumstances, although she objects to the collection of her personal information through the video surveillance system, she cannot avoid it. She has clearly indicated in writing that she does not consent to the collection of her personal information in this manner.¹⁸ I conclude that she has not voluntarily provided her personal information in accordance with s. 8(1)(b).

[47] Therefore, I find that s. 8(1) does not apply and s. 6(2)(c) does not authorize Bellevue to collect the personal information of the complainant through video cameras, as the complainant is not deemed to have consented.

Conclusion on s. 6(2)

[48] I find that s. 6(2) does not authorize Bellevue to collect the personal information of the complainant through its video surveillance system. Therefore, Bellevue contravened s. 6(1) when it collected the personal information of the complainant.

[49] In the absence of the authority under s. 6(2) to collect the personal information of the complainant, s. 6(1) prohibits the collection or use of this information. Whether collection complies with the reasonable person test in s. 11 is not relevant in this case. This provision does not authorize the collection of personal information unless s. 6(2) also authorizes the collection. It is a component of what is required to establish consent was given freely. It is a requirement in addition to those that s. 6(2) imposes. The collection of personal information must comply with all of these provisions.

[50] I note that there are previous orders that have found PIPA authorizes the collection of personal information in a residential building through video surveillance systems in certain locations and for certain purposes. In Order P21-06, the adjudicator found that a bylaw a strata corporation had implemented, permitted the collection of personal information through the use of video surveillance cameras for certain purposes in accordance with s. 12(1)(h).¹⁹ In Order P09-02, the adjudicator found that a strata corporation was authorized to collect personal information through video surveillance cameras for certain purposes, but the application of s. 6(2) was not a matter at issue in that case.²⁰

¹⁷ Bellevue's response submission, para. 61

¹⁸ See paras. 20-21.

¹⁹ P21-06, para. 96.

²⁰ P09-02.

The differences are that, in the present case, s. 6(2) is a matter at issue and I have found that s. 12(1)(h) does not authorize Bellevue to collect the complainant's personal information without her consent.

Does s. 6 of PIPA authorize Bellevue to use the personal information of the complainant collected through its video surveillance system?

[51] The requirements of ss. 6(1) and (2) apply equally to collection, use and disclosure of personal information. An organization cannot use personal information unless it was authorized to collect it in the first place. Therefore, as I find that Bellevue was not authorized to collect the complainant's personal information, I also find that it is not authorized to use it. Consequently, I find that Bellevue contravened s. 6(1) when it used the personal information of the complainant.

CONCLUSION

[52] For the reasons given above, I make the following order under ss. 52(3) and 52(4) of PIPA:

1. I find that Bellevue is not authorized under s. 6 to collect or use the personal information of the complainant through its video surveillance system.
2. I require Bellevue to cease collecting and using the personal information of the complainant through its video surveillance system. Bellevue must disable all of the cameras covering areas of the building where it is reasonable to conclude that the complainant may access. I also require Bellevue to delete any existing footage of her.
3. I require Bellevue to provide the OIPC's registrar of inquiries with information and evidence that proves it complied with the above requirements.

[53] Pursuant to s. 53(1) of PIPA, the public body is required to comply with this order by January 30, 2023.

December 16, 2022

ORIGINAL SIGNED BY

Jay Fedorak, Adjudicator