



July 10, 2008

John Irving
Vice President and General Counsel
BC Transmission Corporation
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PO Box 49260
Vancouver, BC V7X 1V5

Dear John Irving:

**Preliminary review—British Columbia Transmission Corporation
("BCTC")—OIPC File No. F08-35245**

This letter relates to my review of BCTC's collection of personal information of certain individuals for use in legal proceedings in the British Columbia Supreme Court. For the reasons given below, we will not proceed any further in relation to the subject matter of the documentation that BCTC has provided to us.

BACKGROUND

BCTC is a Crown corporation that plans, operates and maintains the provinces publicly owned electrical transmission system. In discharging its responsibility for planning and upgrading the transmission system, BCTC obtains approval of, and implements, a large number of maintenance and upgrade projects to ensure that it can continue to provide safe and reliable transmission service.

According to BCTC, the Vancouver Island Transmission Reinforcement Project ("VITR") involves upgrading the infrastructure that delivers electricity to more than 700,000 residents on Vancouver Island and the southern Gulf Islands. The existing 50-year-old line will be replaced between the Arnott substation in Delta and the Vancouver Island Terminal in North Cowichan on Vancouver Island.

This project proceeded after a 23-month review process, which involved 47 days of public hearings before the British Columbia Utilities Commission ("BCUC"). The BCUC granted permission for BCTC to replace the line and ordered that it be constructed using overhead construction through Tsawwassen.

There was substantial community opposition to the project, including by a group known as the Tsawwassen Residents Against Higher Voltage Overhead Lines ("TRAHVOL"). The decision of the BCUC was unsuccessfully challenged four times in the superior, with leave to appeal ultimately being refused by the Supreme Court of Canada.

VITR was scheduled to begin on June 2, 2008.

BCTC provided evidence to us that, throughout this process and leading up to the start of construction, received emails and other correspondence from groups and individuals stating their intention to take steps to interfere with or delay construction of the replacement line. This included "refusal of access" letters, from what BCTC described as a "large number" of Tsawwassen property owners whose properties are subject to the right-of-way for VITR, indicating the owners would not allow BCTC construction crews onto their property to replace the line. The material BCTC provided included print-outs from a public social networking site created in opposition to VITR.

BCTC said that

...given the level of opposition to the Project in Tsawwassen, and in some cases, elsewhere, BCTC expected that, unfortunately, in all likelihood it would have to undertake court proceedings and obtain injunction orders allowing it to undertake construction of the Project. In the absence of a court-ordered injunction, BCTC's only other choice is to attempt to physically assert its legal rights and risk a potential serious physical altercation. Given this, BCTC determined that it would not attempt to physically enforce its legal rights in the face of a refusal of access or other interference but would gather evidence to support court injunction applications to allow construction to continue, including obtaining video footage of any physical interference with construction activities or refusals to provide access.

On June 2, 2008, the date construction was scheduled to begin; a video crew retained and instructed by BCTC's legal counsel accompanied the construction crew to the site. BCTC construction crews experienced interference and denials of access by certain property owners. This was filmed by the video crew. Denial of access and interference continued that week and, on June 6, 2008, BCTC filed injunction proceedings. At the order of the Court, the defendants were served papers by a professional process server. It was at that time that the homeowners became aware that BCTC's contractors had been video taping the defendants and other individuals on the construction site and the properties where access was being refused.

On June 11, 2008, the Court granted the injunction.

BCTC has provided copies of the materials it filed in support of the injunction application, including copies of the videotapes, emails and other correspondence and social networking site materials.

BCTC is a public body covered by FIPPA.

In light of this background, I will assess BCTC's authority under FIPPA to collect and use personal information for the court proceedings.

DOES BCTC HAVE AUTHORITY TO COLLECT THIS PERSONAL INFORMATION?

FIPPA defines "personal information" as "recorded information about an identifiable individual", excluding "contact information". Section 26 of FIPPA sets out the only circumstances in which a public body may collect personal information:

Purpose for which personal information is to be collected

26. No personal information may be collected by or for a public body unless
 - (a) the collection of that information is expressly authorized by or under an Act,
 - (b) that information is collected for the purposes of law enforcement, or
 - (c) that information relates directly to and is necessary for an operating program or activity of the public body.

In response to our queries, BCTC stated that it collected personal information under the authority of s. 26(c):

BCTC has been fully authorized to construct the VITR Project through Tsawwassen. In fact, the BCUC expressly directed BCTC to do so expeditiously. Among other things, the *Utilities Commission Act* provides that a public utility must obey the lawful orders of the BCUC made under the *Utilities Commission Act* and do all things necessary to secure observance of those orders by its officers, agent and employees. Accordingly, even beyond its normal mandate, BCTC is statutorily required to do all things necessary to construct the VITR Project and have it in-service as directed by the BCUC.

BC Hydro has a right of way to lands upon which the construction is occurring and BCTC, as an agent of BC Hydro, has the authority to enter onto land in order to access the right of way to construct the Project. BCTC's obligations to construct the VITR were blocked by property owners and others who are attempting to resist construction. Unfortunately in order to fulfill its mandate, BCTC needs to be in a position to seek injunctive relief.

I accept that construction of the VITR is an "operating program or activity" of BCTC. The issue is whether the collection of personal information in this instance was related, as required by s. 26(c), "directly to and is necessary for" that operating program.

As to whether BCTC's enforcement of its rights under the right-of-way is part of its "operating program" of constructing VITR, for BCTC to fulfill its mandate, it required access to the construction site and related properties, and this, in turn, required injunctive relief in light of the anticipated and actual interference with BCTC's construction of the line. I accept that BCTC's enforcement of its rights through legal proceedings is part of its operating program of constructing VITR.

The Commissioner has said that, in assessing whether personal information is "necessary" for the purposes of s. 26(c), one must consider a number of factors, including the sensitivity of the information, the particular purpose for which it was collected and the amount of personal information collected in view of the purpose for which it was collected (Order F07-10).

BCTC contended, and I accept, that the information it collected and used for its injunction application was collected solely for the purpose of obtaining injunctive relief and was necessary for that purpose. Further, it says, the amount of information filed in court is not disproportionate and does not involve highly sensitive information, noting that the video material, in particular, consists of images taken in public.

I will note here that, at this time, there is no suggestion that BCTC was conducting covert surveillance of any individual.

I need not assess BCTC's claim that the personal information was also collected for "law enforcement purposes" within the meaning of s. 26(b) of FIPPA.

HOW PERSONAL INFORMATION IS TO BE COLLECTED

Section 27 of FIPPA requires a public body to collect personal information directly from the individual in question and tell that person the purpose for which it is collecting that information, unless the information "is collected for a proceeding before a court or a judicial or quasi-judicial tribunal". In these circumstances, s. 27 permitted indirect collection of personal information and no notice of collection to the individuals involved was required.

REASONABLE SAFEGUARDS

Section 30 of FIPPA requires a public body to make "reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or disposal" of personal information. This includes ensuring that third-party contractors abide by the relevant privacy protections contained in Part 3 of FIPPA. In this instance, the video production company was engaged through a "verbal retainer", which, absent more, on its face falls short of what s. 30 contemplates. Since then, however, BCTC has taken appropriate steps, in my view, to remedy this situation; including by requiring its contractor to sign a privacy protection agreement. No further action by this office is required on this point.

COMPLAINT CONCERNING SURVEILLANCE BY A PROCESS SERVER

As BCTC is already aware, we have received a complaint by an individual who alleges that she and her family were videotaped by a process server after she had been served with papers. We will be opening a separate file on this individual complaint and dealing with it in due course.

CONCLUSION

Given the above conclusions, which are based on the information provided to me to date, no formal investigation or review of this matter is warranted respecting BCTC's collection and use of personal information for the purposes of obtaining the injunction granted June 11, 2008.

BCTC should treat this letter as being publicly available.

Yours sincerely,



Mary Carlson
Executive Director