

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER P2016-02

March 7, 2016

GRANDIN MANOR LTD.

Case File Number P1815

Office URL: www.oipc.ab.ca

Summary: A unit owner of Grandin Manor Ltd., a condominium corporation, (the Organization) made a complaint to the Commissioner that the surveillance system installed in the Organization is not in compliance with the *Personal Information Protection Act* (PIPA). He complained that the Organization has not installed signs notifying individuals of the extent of surveillance it carries out and the extent to which surveillance cameras are in use. He also complained that the Condominium Board reviews surveillance footage and uses information obtained from the footage to review bylaw infractions and to enforce compliance with the condominium bylaws. Finally, he complained that the Organization collected his personal information with surveillance cameras when he scribbled comments on a notice posted in the elevator and when it used this information to send him a warning letter about his conduct.

The Adjudicator determined that the owners had passed a resolution to increase surveillance in the condominium and that when they did so, they acted as the Organization. She found that when visitors visit the condominium they have sufficient notice of the presence of surveillance that they may be deemed to consent to the Organization's collection of personal information for the purposes of maintaining security in the building.

The Adjudicator found that when the Organization reviewed surveillance footage for the purpose of deterring the Complainant from scribbling comments on notices in the future, that it had done so for a purpose for which PIPA requires it to obtain consent and to

provide notice prior to collection. She required the Organization to cease collecting and using personal information from surveillance cameras for purposes other than the obvious purposes for having surveillance unless it first provided appropriate notice under PIPA of its intention to collect and use information for these purposes.

Statutes Cited: AB: *Personal Information Protection Act* S.A. 2003, c. P-6.5 ss. 1, 7, 8, 11, 13, 14, 16, 17, 20, 52 *Condominium Property Act*, R.S.A. 2000, c. C-22, s. 32

Authority Cited: AB: Order P2006-008, P2008-008

I. BACKGROUND

[para 1] On March 18, 2011, The Complainant made a complaint to the Commissioner that the surveillance system installed in Grandin Manor Ltd., a condominium corporation, (the Organization) is not in compliance with the *Personal Information Protection Act* (PIPA). He complained that Grandin Manor Ltd. has not installed signs notifying individuals of the extent of surveillance it carries out and the extent to which surveillance cameras are in use. He also complained that the Condominium Board reviews surveillance footage and uses information obtained from the footage to review bylaw infractions and to enforce compliance with the condominium bylaws.

[para 2] The Commissioner authorized mediation to resolve the dispute between the Complainant and the Organization. As mediation was unsuccessful, the matter was scheduled for a written inquiry.

II. ISSUES

Issue A: Does the Organization collect and/or use personal information contrary to, or in compliance with, section 7(1) of PIPA (no collection, use or disclosure without either authorization or consent)? In particular,

- a. **Does the Organization have the authority to collect and/or use personal information without consent, as permitted by sections 14 and 17 of PIPA?**
- b. **If the Organization does not have the authority to collect and/or use the information without consent, does the Organization obtain consent in accordance with section 8 of the Act before collecting or using the information? In particular,**
 1. **Does an individual consent in writing or orally, or**
 2. **Is an individual deemed to have consented by virtue of the conditions in section 8(2)(a) and (b) having been met? or**

3. Is collection, use or disclosure permitted by virtue of the conditions in section 8(3)(a), (b) and (c) having been met?

Issue B: Does the Organization, as a condition of supplying a product or service, require individuals to consent to the collection of personal information beyond what is necessary to provide the product or service, contrary to section 7(2)?

Issue C: Does the Organization collect or use personal information contrary to, or in accordance with, sections 11(1) and 16(1) of PIPA (collection and/or use for purposes that are reasonable)?

Issue D: Does the Organization collect or use personal information contrary to, or in accordance with, sections 11(2) and 16(2) of PIPA (collection and/or use to the extent reasonable for meeting the purposes)?

Issue E: Does the Organization collect personal information contrary to, or in accordance with, section 13 of PIPA? In particular, was it required to provide, and did it provide, notification, before or at the time of collecting the information, in accordance with section 13 of PIPA?

III. DISCUSSION OF ISSUES

Issue A: Does the Organization collect and/or use personal information contrary to, or in compliance with, section 7(1) of PIPA (no collection, use or disclosure without either authorization or consent)? In particular,

- a. Does the Organization have the authority to collect and/or use the information without consent, as permitted by sections 14 and 17 of PIPA?
- b. If the Organization did not have the authority to collect and/or use the information without consent, did the Organization obtain the Complainant's consent in accordance with section 8 of the Act before collecting or using disclosing the information? In particular,
 1. Does the individual consent in writing or orally, or
 2. Is the individual deemed to have consented by virtue of the conditions in section 8(2)(a) and (b) having been met? or
 3. Is the collection, use or disclosure permitted by virtue of the conditions in section 8(3)(a), (b) and (c) having been met?

[para 3] The Complainant complains that the Organization is not in compliance with PIPA regarding its operation of surveillance cameras. He states:

Please accept this letter to serve as my formal complaint against the Grandin Manor Corporation and its Board for I believe is a violation to my right of privacy in accordance to the PIPA due to (in my opinion) a poorly controlled "overzealous" video surveillance security System (CCTV) that is being operated and managed exclusively by the Board (who are also residents of Grandin Manor).

The History

1. Firstly, let me begin back to the fall of 2007 when I purchased my condominium in Grandin Manor (here after referred as GM). It was a private sale and prior to possession; I was given from the seller, the original sales brochure of GM which outlined all the floor plans, facilities and its features in order to become familiar with the building.

[...]

One of GM's features was a "state of the art Video Security System" comprising of "one" Closed Circuit Television Camera (CCTV) pointing at the intercom area inside the double door security vestibule located at the main entrance of the building [...]

And how it worked, was when your visitor arrived and called your suite through the intercom, you could see the visitor through your television set standing inside the double door vestibule at the main entrance; this would allow you to identify your visitor and observe if anybody else (uninvited) was trying to sneak in while you "buzzed" open the inner main door to let your visitor in [...]

The original CCTV security system was installed by the developer at time of construction (1999, 2000), and to in order to provide a surveillance warning prior to entry into the building at the main entrance security vestibule, there is in "light gold print" of a "symbol" of a camera and a indiscrete sentence stating: "*This Building is Monitored by Video Surveillance*" stenciled on the window and advising that he/she is under surveillance while "in" the vestibule (to me, that's all what one would think; because, after all, this is only a typical Hi-rise with front door security). [...]

The original CCTV system (above) to me was reasonable and non-[invasive] to people's rights and served its usefulness; but then things changed.

The Change

Sometime over the years, the Board decided to form a "security committee" which usually comprised of the President and one/two Board Member(s) to focus on security issues of the building. As a result, there were un-marked cameras and more security door pods, (magnetic locks) installed "here and there" all decided and justified by the new security committee and Board. At the 2007 Annual General Meeting, it was announced and passed that more security upgrades were required and a lot of "technical jargon and acronyms" was given by the security committee to support this upgrade (e.g. a new DVR, CCTV, feeds, software, etc...) and I believe a lot of people didn't fully understand what they approved due to the hastiness of the meeting and lack of detail given. Interesting enough, months later, four cameras were now transmitting "live" pictures to your TV set for personal viewing.

Strangely enough, this new CCTV system was continuously "on" transmitting four "live" digital pictures through Shaw cable so any individual(s) out of the 116 suites (possibly 232 people) living in GM could sit and watch "live" or record the pictures of: the front and back door entrances, and both P1 & P2 garage doors entrances (the alley) of the building whether you had a visitor or not. Note: You could only operate or buzz the "inside" main door – so I question the need of viewing the outside main front door, the back door and the alley?

[...]

The new 24/7 “live” and “recordable” surveillance was so clear on your TV set, you could see and identify most of your neighbours, [...] other owners, residents (usually 30% are unidentifiable renters due to high turnover), visitors, etc ...coming and going in and out of the building. This placed you under house surveillance and sometimes you felt that you were being stalked, tracked or simply observed – no privacy. Could these “pictures” end up on [YouTube]? Was it for by-law enforcement by your neighbour? What?

In addition to the four cameras I mention, as time went on I have learnt there is an abundance of cameras installed in GM both "outside" and "inside" the building. Some cameras are marked and some are not; some are in plain view and some not. Everything seems so secretive.

I believe the total numbers of cameras are ranging anywhere from 10 to 12 units; and it was the Board who decided what 4 selected cameras the residents could view (out of the possible 12) and the Board kept exclusive use/access to the balance of the remaining cameras (e.g. 6 to 8 cameras?) to themselves. But, where were the other 6 to 8 cameras located and monitoring what? And who was watching? All in all, the Board has full access, control and decides distribution, installation, and usage of the system. [...]

Cameras Installed “Inside” The Elevators

There is recorded surveillance in the elevators. There is an extremely small “un-marked” camera mounted near the corner at the ceiling/wall edge inside both elevators. There are no warnings or signage posted neither inside or [outside] the elevators advising that you are under surveillance. The cameras are on 24/7 and monitors individual(s) getting on & off and riding up and down.

[...]

There is recorded surveillance in the Parkade P1 & P2 Lobbies. There is a weather proof (outdoor bubble like) "un-marked" camera mounted over the door near the corner of the ceiling/wall edge mixed in with air ducts in both P1 & P2 indoor parkade lobbies. Again, there are no warnings or signage posted neither inside or outside the lobbies or its doors advising that you are under surveillance. The cameras are on 24/7 monitoring you waiting in the lobby and you getting on & off the elevators.

[...]

I do not know if the Board (or just the security committee and/or President) has the privilege of having all 12 feeds to their own personal TV set for "live" viewing (e.g. elevators, lobbies, etc...); but I do know they can definitely go down and watch the GM digital video recorder (DVR) anytime they want to, and/or take copies of the pictures and email it around to each other as they have done in the past. And I question the Board's fairness and use of the surveillance:

Example 1: In one particular incident, the Board granted personal access to [a Board Member] to use some of the [photos] that were taken by the elevator cameras, to help prosecute his neighbour in a situation of his [...] *illegal* door[wreath] being damaged and forced compensation. However, in a situation where I experienced a loose nuisance dog jumping on me and running around the building on 4 separate violations (video recorded) and complained, help from the Board was denied. [Another Board Member] (also head of the security committee) was with me and witnessed this; yet, nothing was done to my knowledge. No fines issued.

Example 2: Another incident, the Board "published" pictures of a parkade break-in taken from one of the "inside un-marked" cameras in a Grandin Manor Newsletter (March

2010) asking if any of the residents could identify those individuals. (That's how I learnt about some of the un-marked/secret indoor cameras) and after the break-in the Board decided to post warning signs on the parkade doors (Note: the new signs were just installed recently on both doors)

[para 4] The Complainant's complaint turns upon the Organization's practices regarding collection, use, and disclosure of personal information obtained from CCTV cameras. He is concerned that the Organization has installed more cameras than are necessary for ensuring the security of the condominium. He is also concerned that inadequate notice has been given regarding the presence and purpose of the cameras and that condominium members voted for the increased surveillance in error. He complains that board members disclosed surveillance footage to condominium owners so that condominium owners may exert legal rights over other condominium owners, but that the board has not assisted him when other condominium owners have breached bylaws to his detriment. In his submissions, he also notes that he believes visitors to the building have inadequate notice that there is surveillance in the elevators and in the parkade. Finally, he complains about an instance in which the Organization used his personal information obtained from surveillance footage to send him a warning notice regarding his action of scribbling comments on a notice posted in the elevator.

[para 5] In rebuttal, the Organization states:

The security system was voted upon by Grandin Manor unitholders, and therefore binding on the [Complainant]. Ample notice was and is provided to unitholders and visitors about the system and the locations of cameras. In accordance with *PIPA*, access to the system and footage is highly restricted. In sum, this system and accompanying policies are reasonable and should not be changed.

Elsewhere in its submissions, the Organization notes that the surveillance footage is located in a locked room that is not accessible by tradespeople or unauthorized persons. The Organization also notes that the surveillance footage is password protected and accessible only by the security committee designated by the board of directors of the condominium. It states that the purpose of installing surveillance was to deter vandalism and prevent mischief making.

[para 6] As noted above, the complaint before me is concerned with the collection and use of personal information through the operation of surveillance cameras installed in the condominium. The Complainant takes the position that this collection is without consent and without adequate notice. His complaint encompasses two types of individuals whose information is collected: visitors to the condominium and unit owners.

Personal information of visitors

[para 7] The Complainant notes in his submissions that there are no signs warning of the presence of surveillance cameras in the parkade or in the elevator. He is also concerned that the cameras in these locations are not obviously cameras. He notes that there is a warning stenciled on the front door that the premises are under surveillance, and a drawing of a camera. He is concerned that individuals walking in the parkade or in the

elevator have inadequate notice of the presence of cameras to consent to, or be deemed to consent to, the Organization's collection of their personal information with these cameras, as there is no signage in these areas.

[para 8] Section 7(1) of PIPA prohibits an organization from collecting, using, or disclosing personal information without the consent of the individual whom the information is about:

- 7(1) Except where this Act provides otherwise, an organization shall not, with respect to personal information about an individual,*
- (a) collect that information unless the individual consents to the collection of that information,*
 - (b) collect that information from a source other than the individual unless the individual consents to the collection of that information from the other source,*
 - (c) use that information unless the individual consents to the use of that information, or*
 - (d) disclose that information unless the individual consents to the disclosure of that information.*

An organization may collect, use, or disclose personal information without the consent of an individual whom the information is about if it is collected or used for purposes authorized by sections 14, 17, and 20 of PIPA respectively. Sections 14, 17, and 20 are provisions where "the Act provides otherwise" as described by section 7(1).

[para 9] The Organization installed cameras in the condominium for the purpose of deterring vandalism and to promote security in the building. The presence of the surveillance cameras may also serve to increase the value of the property, and to make residents feel secure. The Organization obtains information from the surveillance cameras for the purpose investigating incidents when they occur. "Incidents" may include instances of trespassing, vandalism, or failure to comply with bylaws. It is not entirely clear what the Organization means when it refers to "mischief". However, given its other statements regarding the purpose of surveillance, I understand it to refer to criminal mischief, an offence in which an individual willfully destroys the property of another, as opposed to the non-criminal situation in which an individual teases another.

[para 10] Surveillance cameras capture the personal information of individuals indiscriminately. A surveillance camera does not capture only information about persons who break the law; it also captures the images of those who are not breaking the law. In Order P2006-008, former Commissioner Work determined that the personal information of individuals is collected through surveillance when their image is recorded on a hard drive or videotape.

[para 11] Organizations install surveillance cameras primarily for deterrent or preventative purposes. In other words, the primary function of the collection of personal information through surveillance is to dissuade criminals from committing crimes on the

premises, thereby promoting the safety and security of the building for residents and visitors. Organizations may also use surveillance footage to investigate incidents when they occur. In the case of condominiums, surveillance may be installed for these reasons, in addition to ensuring that residents feel that they and their personal property are secure, and to ensure that the condominium maintains its value.

[para 12] Section 14 of PIPA establishes the circumstances in which an organization is not required to obtain consent to collect personal information. Deterring crime and promoting safety and security are not among the purposes listed in this provision for which an organization may collect personal information without consent although section 14(d) does authorize collection without consent when information is collected for the purpose of an investigation or for legal proceedings. However, it cannot be said the personal information of individuals collected through surveillance when no incidents are taking place, or are reasonably likely to take place, is collected for the purpose of an investigation or a legal proceeding.

[para 13] Most of the personal information collected by surveillance cameras does not serve an investigative purpose, but serves the general purpose of promoting safety and security, discussed above. It is therefore necessary to determine whether an organization has obtained consent from visitors within the terms of section 8 of PIPA to collect personal information for the purposes for which the organization has installed surveillance cameras.

[para 14] Section 8 establishes the requirements for obtaining consent. The relevant provisions are the following:

8(1) An individual may give his or her consent in writing or orally to the collection, use or disclosure of personal information about the individual.

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

(a) the individual, without actually giving a consent referred to in subsection (1), voluntarily provides the information to the organization for that purpose, and

(b) it is reasonable that a person would voluntarily provide that information.

[...]

(3) Notwithstanding section 7(1), an organization may collect, use or disclose personal information about an individual for particular purposes if

(a) the organization

(i) *provides the individual with a notice, in a form that the individual can reasonably be expected to understand, that the organization intends to collect, use or disclose personal information about the individual for those purposes, and*

(ii) *with respect to that notice, gives the individual a reasonable opportunity to decline or object to having his or her personal information collected, used or disclosed for those purposes,*

(b) *the individual does not, within a reasonable time, give to the organization a response to that notice declining or objecting to the proposed collection, use or disclosure, and*

(c) *having regard to the level of the sensitivity, if any, of the information in the circumstances, it is reasonable to collect, use or disclose the information as permitted under clauses (a) and (b).*

(4) *Subsections (2), (2.1), (2.2) and (3) are not to be construed so as to authorize an organization to collect, use or disclose personal information for any purpose other than the particular purposes for which the information was collected.*

[para 15] It is clear that when visitors walk past the surveillance cameras they do not provide oral or written consent within the terms of section 8(1) to the condominium corporation's collection of their personal information with its surveillance system. I must therefore consider whether sections 8(2) or 8(3) provide the necessary authority for the organization to collect personal information for the purposes for which surveillance cameras have been installed.

[para 16] Section 8(2) establishes that an organization may deem an individual to consent to the collection of the individual's personal information by the organization for a particular purpose if the individual voluntarily provides the individual's personal information for that purpose and it is reasonable that the individual would do so. Possibly, the situation in which an individual, aware that a condominium is under surveillance, walks into the building could constitute providing personal information to an organization for a particular purpose, with the purpose being the operation of surveillance. Admittedly, this is a strained interpretation of the phrase, "*voluntarily provides the information to the organization for that purpose*". The act of knowingly walking into premises in which surveillance cameras are operating may support finding that an individual does not object to walking into such premises, but does not necessarily mean that the individual is actively providing the individual's personal information for any of an organization's purposes in maintaining a surveillance system.

[para 17] In addition, I note that section 8(4) states that section 8(2), (like section 8(3)) is not to be construed as authorizing an organization to collect personal information

for purposes other than its particular purposes for collecting the personal information. Section 8(4) appears to state that sections 8(2) and 8(3) apply to situations where an organization collects personal information for particular, rather than general purposes.

[para 18] However, I note that former Commissioner Work stated the following in Order P2006-008:

In the alternative, the Organization may avail itself of section 13(4) of PIPA wherein section 13(1) of the Act will not apply if section 8(2) is applicable. Section 8(2) reads:

8(2) An individual is deemed to consent to the collection, use or disclosure of personal information about the individual by an Organization for a particular purpose if

- (a) the individual, without actually giving a consent referred to in subsection (1), voluntarily provides the information to the organization for the purpose, and
- (b) it is reasonable that a person would voluntarily provide that information.

The Organization submits that an individual who chooses to enter the locker rooms after seeing the signage notifying him of the existence of cameras and observing the cameras has voluntarily provided his personal information as contemplated in subsection 8(2) of PIPA.

However, deemed consent has to be for a particular purpose. It is difficult to conclude how an individual upon reading the wording of the signage and viewing the cameras, can sufficiently identify the purpose for which their personal information is being collected. Had the Organization provided wording in its signage similar to that reflected in its privacy policy, it may have availed itself of section 8(2). However, given the signage as it now stands, the requirements of section 8(2) cannot be met in this instance. Accordingly, the Organization has not complied with the requirements set out in section 13(1) of the Act.

Former Commissioner Work considered that section 8(2) could apply to situations in which voluntarily walking into an area with surveillance cameras installed could be deemed to have consented to the collection of personal information for particular purposes if the organization's purposes in collecting information in the area could reasonably be determined. In that case, the surveillance cameras were located in changing rooms at a facility. The location of the cameras added ambiguity to the organization's purpose in collecting personal information with them, as surveillance cameras are not normally installed in areas where people are changing, and had not been installed in the changing rooms in that facility previously.

[para 19] In this case, the Organization has stencilled a sign at the front door of a condominium that states: "Building is monitored by Video Surveillance". There is also a drawing of a surveillance camera stencilled on the front door. Visitors are therefore informed that surveillance cameras are installed in the building, regardless of whether the visitor speaks English.

[para 20] The Organization does not state its purposes in operating surveillance cameras in the notice at the front door. However, in my view, the steps the Organization has taken to notify visitors that it operates surveillance, and the fact that it is a residential

condominium, are sufficient to enable visitors to understand the reasons why it collects personal information through surveillance.

[para 21] In Order P2006-008 former Commissioner Work held that the organization in that case had not informed people sufficiently as to why surveillance had been installed in the private changing areas of a club. In this case, there is no suggestion that the Organization has installed surveillance cameras in private areas, but rather, surveillance has been installed to monitor the common areas and entrances of the condominium property.

[para 22] I do not take former Commissioner Work to suggest that an organization must provide signs stating its purpose in collecting personal information before an organization may rely on section 8(2). Section 8(2) does not create a duty to provide notice at all. Rather, it deems an individual to consent to collection for a particular purpose if the individual voluntarily provides the information the organization seeks to collect and it would be reasonable for the individual to provide the information for that purpose. Commissioner Work's point in Order P2006-008 was that signage as to purpose is necessary where the location in which surveillance is installed renders an organization's purpose in collecting personal information ambiguous.

[para 23] Surveillance cameras are ubiquitous and their value as deterrents to criminal activity where they are installed are well-known. In my view, it can be reasonably understood that when a residential condominium such as the Organization collects personal information through surveillance that it is doing so to maintain the security and value of the condominium and to deter criminal acts. It may also be reasonably understood that footage from the camera may be used in legal proceedings or for investigations, as in the case where surveillance captures the image of an individual who has committed a criminal offence. For a residential condominium corporation such as the Organization to rely on section 8(2) as consent for its collection of personal information for the particular and reasonable purposes of maintaining security and value and to deter criminal acts, it is sufficient to provide notice that the building is under surveillance. If individuals choose to visit the building despite the presence of surveillance cameras, or notice that surveillance is taking place on the premises, they may be deemed to agree to having their images collected by surveillance cameras for these purposes. However, if a residential condominium collects personal information for purposes other than these self-evident ones, it will be necessary for it to provide notice of these purposes in order to rely on section 8(2).

[para 24] So long as there is an indication at the access points where visitors may enter the building that surveillance is in effect, and an organization does not collect personal information for purposes other than maintaining and promoting building security, deterring acts of theft or criminal mischief, or collecting information to assist in prosecution or legal proceedings in relation to criminal offences when they occur, visitors have sufficient notice to decide whether they wish to enter the building and have their images recorded by surveillance cameras or not.

[para 25] As there is no evidence before me to suggest that the Organization collects or has collected information about visitors with its surveillance cameras for purposes that are other than those for which surveillance cameras are normally installed in the common area of a residential condominium, I am satisfied that its collection of personal information with surveillance cameras meets the requirements of section 8(2).

[para 26] In arriving at this conclusion, I have also considered whether section 8(3) could apply in the circumstances. However, section 8(3)(c) requires an organization to take into consideration the level of sensitivity of personal information prior to providing notice of its intent to collect information, and an organization using surveillance cameras is not in a position to make this determination, given that it has no idea of what information will be captured by the cameras. As it does not know the surveillance camera is or will collect personal information, it cannot assess the sensitivity of the information to determine whether notice is an effective means of obtaining consent within the terms of section 7(1). Therefore, I do not consider section 8(3) to apply to the situation in which surveillance cameras are the means by which an organization collects personal information.

Information about unit owners

[para 27] I am unable to agree with the Complainant that the operation of the cameras in the condominium is without consent of condominium owners. Both the Complainant and the Organization are in agreement that a majority of condominium owners voted to increase the number of surveillance cameras in the building at the annual general meeting of 2007. The Organization provided a copy of the minutes of the Organization's Annual General Meeting of October 24, 2007. These minutes establish that a motion to upgrade the security system and increase the number of surveillance cameras, to be funded by a special assessment, was passed by the unit owners. In subsequent annual general meeting minutes, the board reported to the unit owners regarding the operation of the security system.

[para 28] The condominium owners who comprise the Organization voted to improve the security of the condominium by increasing the number of surveillance cameras. Given that the condominium owners themselves voted to increase security in the condominium by increasing the number of surveillance cameras, and this decision was recorded in the minutes of the 2007 annual general meeting, it cannot be said that the condominium owners have not consented to the presence of surveillance cameras in the building, or to an increase to the number of these cameras. Rather, the increase to the number of surveillance cameras reflects the decision of the owners themselves acting collectively. Further, the evidence of the Organization is that surveillance was increased in order to address incidents of theft and mischief that had occurred on the premises and to increase the security of the building for the safety of residents. In my view, increasing the number of surveillance cameras was a reasonable measure.

[para 29] In saying this, I note that the agreement of the owners to install surveillance cameras does not necessarily permit the collection of personal information

for purposes for which it would be unreasonable to do so under sections 11(1) and (2). However, in this case, it is not unreasonable to install surveillance cameras for the Organization's stated purposes.

[para 30] The Complainant also questions whether the resolution to increase the number of surveillance cameras was properly passed; however, that is not a matter for me to decide, as it lies within the jurisdiction of the Courts. Under PIPA, I may adjudicate complaints that an organization is not in compliance with that Act, but my jurisdiction does not extend to adjudicating complaints that a condominium is not in compliance with the *Condominium Property Act* (CPA). It is the CPA that governs the way in which condominium corporations pass resolutions and not PIPA.

Collection and Use of the Complainant's Personal Information

[para 31] The Complainant also makes a specific complaint that his own information has been collected and used by the Organization contrary to section 7(1).

[para 32] In his letter of January 3, 2012, the Complainant describes the circumstances of his complaint:

Last October, the board posted an exclusive temporary campaign notice on "soliciting" for proxies in the elevators. (The reason I say exclusive is because other owners / [residents] aren't allowed to solicit in Grandin Manor.)

In brief, some Grandin Manor Condo Owners / residents were caught on camera in the elevator scribbling their comments protesting that the board was "soliciting" for proxies and directing owners to give their "blank" (or write in a name) signed proxies to the board member(s) sitting in the Grandin Manor office approximately two weeks prior to the annual board & GM election.

I was singled out and charged with a warning by the board who accused me that I was "vandalizing" their exclusive campaign notice, but when I challenged the Board to show evidence (photos) and issue copies of the letters of those who complained, their response was all evidence was destroyed and they ignored my other request on who complained.

To me, the board destroying any evidence after accusations is improper to say the best; (and the board campaigning for proxies and telling owners it's only used to form a quorum could be construed as fraud;) but to use the camera system to guard their "soliciting" and threaten people is very wrong.

As discussed above, it is beyond my jurisdiction to address those aspects of the Complainant's complaint referring to condominium voting and fairness. However, the aspect of his complaint in which he questions the authority of the Organization to collect his personal information with video surveillance and use it for the purpose of sending the warning letter is within my jurisdiction.

[para 33] As noted above, the Organization states generally in its submissions that a purpose of operating surveillance cameras is to respond to acts of vandalism and "mischief" carried out on the condominium property. As discussed above, I understand the Organization to be referring to criminal mischief, which involves the destruction of

property. However I am unable to find that the Complainant's act of writing on a temporary notice posted in an elevator constitutes an act of vandalism or criminal mischief, or would be understood to be such by residents of the building. "Vandalism", like criminal mischief, typically refers to the destruction of private or public property; it is not clear that the Complainant's act of scribbling comments amounts to destruction of private or public property, such that it could be termed "vandalism". Further, this conduct cannot reasonably be construed as a threat to security.

[para 34] The Organization states:

As the Board of Directors are voted into power to represent the unitholders, it is the appropriate entity to monitor the video surveillance as it carries out the duties and obligations of the condominium corporation. It is unreasonable to expect the Board of Directors to make decisions about incidents of vandalism, theft, mischief, or bylaw infraction without personally reviewing evidence.

I am unable to say that the Complainant's act of scribbling comments on the notice amounts to an incident of "vandalism, theft, mischief, or a bylaw infraction" or would be understood by a unit owner to be so.

[para 35] The Organization provided a copy of its bylaws for my review. Possibly, the Organization considers the Complainant to have contravened bylaw "e" of Part 2 of the Condominium Bylaws, which sets out the duties of condominium owners. This provision states:

An Owner shall: use and enjoy the common Property in such a manner as not unreasonably to interfere with the use and enjoyment thereof by other Owners or their families or visitors.

Depending on what the Complainant wrote, it is conceivable that the Complainant's comments could have unreasonably interfered with the use and enjoyment of the elevator by other owners or their families and visitors. However, there is no evidence before me as to whether the Complainant's scribbling comments on the posted notice had, or could have had, this effect. I am therefore unable to say that the Complainant's act of writing on the temporary notice could be said to be a bylaw infraction, or that the Organization reviewed the surveillance footage to investigate a bylaw infraction.

[para 36] I agree that when the Organization investigates a bylaw infraction, it is investigating a breach of an agreement within the terms of section 1 of PIPA. That is because section 32 of the *Condominium Property Act* deems unit owners to enter agreements with each other and with the condominium corporation to be bound by the bylaws. As a result, if an owner contravenes a bylaw, then the owner is breach of an agreement with the condominium corporation.

[para 37] Under section 14(d) of PIPA, an organization need not obtain consent to collect personal information reasonable for the purposes of an investigation or legal proceeding. (Section 1 of PIPA defines "investigation" as relating to "a breach of agreement", and "legal proceeding" as "a civil, criminal, or administrative proceeding that is related to a breach of agreement.")

[para 38] The Organization may collect personal information for these purposes without consent; however, in this case, the evidence does not establish that when the Organization reviewed the surveillance footage in order to determine the identity of the person or persons who scribbled comments on the notice posted in the elevator, the Organization was doing so for the purpose of investigating a breach of the bylaws. This is because I am unable to say that these actions contravened any bylaws.

[para 39] As I am unable to find that the Organization collected the Complainant's personal information for a purpose for which consent is not required I must consider whether the requirements of section 8 are met.

[para 40] The Complainant did not provide written or verbal consent to the collection within the terms of section 8(1).

[para 41] I note that the Organization's privacy policy does not refer to authorizing surveillance for the purpose of learning the identity of persons who write comments on temporary signage. While I find above that it can be assumed that people understand that surveillance is intended to assist an organization to promote security and to deter the destruction of property, it is not necessarily the case that one would assume security footage would be consulted in situations where security and property have not been threatened. As a result, the Complainant cannot be presumed to have voluntarily submitted his image to the Organization so that it could deter people from scribbling comments on temporary notices within the terms of section 8(2).

[para 42] I also find that section 8(3) is not met, given that the Organization has not provided notice of its intent to collect the personal information of unit owners for the purpose of investigating acts of the kind committed by the Complainant. Moreover, I note that the minutes of the annual general meeting at which it was decided to increase surveillance do not refer to using surveillance to enforce bylaws, or to deter persons from conduct of which some condominium owners may disapprove, but that is not necessarily in contravention of the bylaws.

[para 43] The Organization did not obtain the Complainant's consent to collect his personal information within the terms of section 7(1). As I find that it was required to obtain his consent within the terms of section 8 for the purposes for which it used it, but did not, it follows that I find it contravened this provision when it used personal information.

Issue B: Does the Organization, as a condition of supplying a product or service, require individuals to consent to the collection of personal information beyond what is necessary to provide the product or service, contrary to section 7(2)?

[para 44] Section 7(2) of PIPA states:

7(2) An organization shall not, as a condition of supplying a product or service, require an individual to consent to the collection, use or disclosure of personal information about an individual beyond what is necessary to provide the product or service.

Section 7(2) prevents an organization from obtaining “reluctant consent” from an individual in order for the organization to collect, use, or disclose personal information that is beyond what is necessary for supplying a product or service.

[para 45] In the circumstances of the complaint before me, it does not appear that section 7(2) is engaged. The Organization has installed surveillance cameras because the unit owners who form the Organization passed a resolution to install surveillance cameras. There is no need for the Organization to require the consent of each individual owner to consent to the collection of his or her personal information gathered through the operation of surveillance cameras, given that each owner is part of the Organization and is responsible with the other owners for the collective decision to install surveillance cameras.

[para 46] Moreover, as discussed above, there is no need for the Organization to obtain the consent of individual owners to collect, use or disclose their personal information for the purposes of an investigation or legal proceedings.

[para 47] Finally, there is no evidence that the Organization has required consent to the collection, use, or disclosure of personal information beyond what is necessary as a condition of supplying a product or service. When making decisions about the management of the condominium and maintaining it, the Organization does not provide products or services to unit owners. Rather, as a condominium corporation, the unit owners make collective decisions regarding the upkeep and management of the condominium, similar to the way an individual home owner might make decisions about the upkeep and management of the home owner’s home. The corporation is not supplying the unit owners with products or services when it installs or uses surveillance cameras, any more than an individual home owner could be said to be supplying a product or service to him or herself by installing and using surveillance cameras.

Issue C: Does the Organization collect or use the information contrary to, or in accordance with, sections 11(1) and 16(1) of PIPA (collection and/or use for purposes that are reasonable)?

[para 48] Section 11(1) limits the purposes for which an organization may collect personal information to those that are reasonable. It states:

11(1) An organization may collect personal information only for purposes that are reasonable.

[para 49] Section 16(1) of PIPA limits the purposes for which an organization may use personal information to those that are reasonable. It states:

16(1) An organization may use personal information only for purposes that are reasonable.

[para 50] The evidence establishes that the Organization has installed surveillance cameras to maintain the security of the condominium, at the direction of the owners. In my view, this purpose is reasonable.

Issue D: Does the Organization collect or use the information contrary to, or in accordance with, sections 11(2) and 16(2) of PIPA (collection and/or use to the extent reasonable for meeting the purposes)?

[para 51] Section 11(2) limits the ability of an Organization to collect personal information to the extent that is reasonable for meeting its purposes in collecting the information. It states:

11(2) Where an organization collects personal information, it may do so only to the extent that is reasonable for meeting the purposes for which the information is collected.

[para 52] Section 16(2) limits the ability of an Organization to use personal information to the extent that is reasonable for meeting its purposes in collecting the information.

[para 53] As discussed above, the Organization has collected and used the information obtained from surveillance cameras to maintain security in the building and I have found this purpose to be reasonable. However, I have also found that the Organization collected and used the Complainant's personal information for the purpose of deterring him from writing on a temporary notice that had been posted in the elevator. In my view, this purpose is not reasonably connected to the purpose of maintaining and promoting security in the building.

[para 54] In addition, it does not appear to be the case that his act of scribbling comments was contrary to the bylaws. While it may be reasonable to collect and use personal information from surveillance footage for the purpose of enforcing bylaws, assuming that this is also the Organization's purpose in installing a surveillance system and assuming that notice of this purpose has been provided to users of the building, the conduct the Organization investigated in this case does not appear to contravene its bylaws. As a result, I find that the Organization collected and used information from the surveillance footage for purposes not consistent with its stated purposes of promoting security and deterring the destruction of property. I therefore find that that the Organization contravened sections 11(2) and 16(2) when it retrieved the surveillance footage and used it to send a warning letter to the Complainant for conduct that appears unrelated to maintaining security in the building.

Issue E: Does the Organization collect the information contrary to, or in accordance with, section 13 of PIPA? In particular, was it required to provide, and did it provide, notification, before or at the time of collecting the information, in accordance with section 13 of PIPA?

[para 55] Section 13 applies when an Organization collects personal information about an individual from the individual. It states, in part:

13(1) Before or at the time of collecting personal information about an individual from the individual, an organization must notify that individual in writing or orally

- (a) as to the purposes for which the information is collected, and*
- (b) of the name or position name or title of a person who is able to answer on behalf of the organization the individual's questions about the collection.*

[...]

(4) Subsection (1) does not apply to the collection of personal information that is carried out pursuant to section 8(2).

[para 56] As drafted, section 13(1) appears to apply to any situation in which an organization collects personal information about an individual from the individual, even information for which an organization is not required to obtain consent from the individual through the application of section 14. The only exception to its application is the situation in which an individual voluntarily provides personal information to the organization under section 8(2).

[para 57] As I have found that section 8(2) enables the Organization to meet the requirements of section 7(1) when it collects the personal information of visitors through surveillance cameras, I need not consider whether the Organization has provided visitors with notice within the terms of section 13.

[para 58] In both Orders P2006-008 and Order P2008-008 it was held that capturing the image of an individual on surveillance footage constitutes collecting information about an individual from the individual for the purposes of section 13.

[para 59] With regard to the Complainant's complaint that the Organization has installed more cameras than he believes are necessary, I have found that the Organization's decision is a collective one, and that all unit owners, the Complainant included, decided on this course of action.

[para 60] However, the Complainant has also complained that his personal information was collected from surveillance footage and used for the purposes of sending him a letter regarding his action of scribbling comments on a temporary notice. In this

situation, the Organization and the Complainant have different interests and cannot be said to act collectively as one entity.

[para 61] The Organization's privacy policy does not make reference to collecting personal information using surveillance cameras for the purpose of enforcing the bylaws, or in this case, for regulating conduct that does not appear to be contrary to the bylaws. (As discussed above, it has not been established for this inquiry that the Complainant's action was contrary to a bylaw.) From the evidence of both the Complainant and the Organization, it appears that the first notice that the Complainant received that the Organization reviews surveillance footage for the purpose of regulating conduct not necessarily contrary to bylaws was a letter from the board advising him that it had already collected his personal information for this purpose.

[para 62] In addition, it does not appear to be the case that the Organization has provided notice to the unit owners that it collects personal information through its surveillance cameras for the purposes of bylaw enforcement. Neither the privacy policy nor the minutes of the annual general meeting at which it was decided to increase surveillance indicate that a purpose of installing the cameras was to monitor or enforce compliance with bylaws. In cases where breaching the bylaws can also be characterized as criminal conduct, notice is likely unnecessary, as notice of the presence of surveillance cameras carries with it this purpose in collecting information. However, the Organization should consider providing notice to residents of its intention to collect personal information from the surveillance cameras for the purpose of enforcing bylaws if it intends to collect information for this purpose in the future.

IV. ORDER

[para 63] I make this Order under section 52 of the Act.

[para 64] I require the Organization to cease collecting and using personal information obtained from surveillance footage for purposes other than the obvious purposes of promoting and maintaining safety and security, unless it first provides appropriate notice under PIPA of its intention to collect and use information for these purposes.

[para 65] I order the Organization to notify me in writing, within 50 days of being given a copy of this Order, that it has complied with the Order.

Teresa Cunningham
Adjudicator