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## What Constitutes Permissible Surveillance in a Strata Corporation?

**Publication / Date:** The CHOA Journal-Fall 2017

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Over the past year, complaints have been a growing by strata owners, tenants and occupants, accusing their strata councils, resident managers and strata managers of abusing their power to collect personal information and actively monitoring activities in their communities without the knowledge or consent of the occupants or the strata corporation. Would you agree to a bylaw that permits cameras in your strata corporation if the following conditions were likely?

- The resident manager or strata council conduct surveillance and record your activities while you are in the exercise room, the pool, doing laundry or your daily routine of coming and going from your strata lot?

This is simply not a matter of a camera recording the daily cycle of events but a person sitting on a monitor and watching what you are doing hour by hour. I have never seen a bylaw that has either been adopted or that is enforceable where the strata corporation has been given the authority by the owners to monitor the private activities of residents, yet many strata council members and the resident employees frequently violate these bylaws and the limitations of the Personal Information Protection Act (PIPA).

PIPA allows personal information to be collected, used or disclosed for reasonable purposes. Under PIPA, reasonable means what a reasonable person would think is appropriate in the situation. What is reasonable will depend on factors such as the kind or amount of personal information you collect, how you plan to use that information, and where or to whom you plan to disclose that information.

PIPA also gives individuals the right to access their own personal information that an organization has about them and ask for their personal information to be corrected if they think it is incorrect or incomplete. In British Columbia, strata corporations and strata agents acting on their behalf must adhere to the privacy rules contained in PIPA.

Before your strata corporation considers adopting any bylaws that permit the collection of personal information or surveillance of common areas, I recommend all council members read the Privacy Guide for Strata Corporations and Strata Managers. Specifically look at the guidelines for creating a privacy policy. If you intend on adopting bylaws that permit the collection of personal information through video surveillance, FOB controls, electronic access and motion activated surveillance, seek a legal opinion on the application and enforceability of the bylaw. **DO NOT** adopt bylaws from other strata corporations. Many of these have passed through several generations of rewrites and often do not apply to the nature of your strata corporation. The guide provides excellent tips on the language your bylaw should contain.

The following is a reprint of Appendix A from the 'Privacy Guidelines for Strata Corporations and Strata Managers' produced by the Office of the Information and Privacy Commissioner (OIPC). To view the entire guide please visit the OIPC website at: [www.oipc.bc.ca](http://www.oipc.bc.ca) or the CHOA website at: [www.choa.bc.ca](http://www.choa.bc.ca)

## **GUIDELINES FOR CREATING A STRATA CORPORATION PRIVACY**

### **Purposes for Collection, Use or Disclosure of Personal Information**

- List all of the purposes for which the strata corporation collects, uses or discloses personal information. Examples might include to:
  - identify and communicate with each strata unit owner and/or tenant;
  - process strata fee payments;
  - respond to emergencies;
  - ensure the orderly management of the strata corporation;
  - comply with legal requirements; and
  - (IF APPLICABLE) allow for the use of video surveillance to ensure the safety of owners, tenants and guests to the strata corporation property.

### **Description of Personal Information Collected**

- Give a general description of the personal information a strata corporation collects, for example:
  - name, address and phone number;
  - banking or credit card information;
  - emergency contact information;
  - vehicle description/license plates;
  - pet information; and
  - names of family members living with an owner or occupying the strata lot.

### **Collection, Use and Disclosure of Personal Information**

- State that the strata corporation will not collect, use or disclose personal information except for the identified purposes unless it has received further consent from the individual, or as permitted or required under PIPA.
- Explain how the strata corporation obtains consent to collect, use or disclose personal information.
- Explain that it will get individuals' consent to collect, use or disclose their personal information, except where the strata corporation is legally authorized or required by law to do so without consent.
- Describe possible situations where the strata corporation may collect, use or disclose

personal information without an individual's knowledge or consent as allowed under ss. 12, 15 and 18 of PIPA.

- Explain that individuals are considered to have given implied consent when the purpose for collection, use or disclosure of personal information would be considered obvious and the individual voluntarily provides personal information for that obvious purpose.
- In the case of employee personal information, explain that PIPA allows the strata corporation to collect, use or disclose employee personal information without consent if it is reasonable solely for the purposes of establishing, managing or terminating an employment relationship between the organization and the individual. (Note that, in such cases, PIPA still requires the strata corporation to notify employees of the collection, use or disclosure.)
- Explain that the strata corporation will make reasonable efforts to ensure that the personal information that it collects, uses or discloses is accurate and complete.
- State that if the strata corporation retains another organization (such as a strata management company) to do work for it that involves personal information, the strata corporation will ensure that there is an agreement in place that commits the organization providing the services to adhere to the strata corporation's privacy policy.

### **Collection of Personal Information**

- Explain what information will be collected with and without the consent of the owner.
- State that the strata corporation will only collect and use personal information that is necessary to fulfill the purposes identified in the policy.
- Explain that the strata corporation will tell individuals its purpose for collecting personal information and give them a chance to refuse to give their personal information or a chance to withdraw their consent later.

### **Disclosure of Personal Information**

- Explain under what circumstances the strata corporation may disclose personal information to other organizations or to government bodies.
- Describe the circumstances in which personal information may be disclosed without consent.
- State that the strata corporation will disclose personal information where authorized by PIPA or required by law.

### **Withdrawal of Consent**

- Explain that individuals may withdraw their consent at any time by giving the strata corporation reasonable notice, but tell individuals they cannot withdraw consent where doing so would frustrate performance of a legal obligation (such as a contract between the individual and the strata corporation).
- Explain that, when individuals tell the strata corporation that they are withdrawing consent, PIPA requires the strata corporation to tell them of the likely consequences of withdrawing consent (such as the strata corporation being unable to provide them with services or goods that require their personal information).

### **Retention by Strata Corporation**

- Explain how long the strata corporation will keep personal information. Subject to the one-year retention requirement, the organization will only retain personal information for as long as necessary to fulfil the identified purposes or as long as required for a legal or business purpose. The privacy policy should be as specific as possible about how long information is retained.

### **Security of Personal Information**

- State that the organization has implemented reasonable security arrangements to prevent against risks such as unauthorized access, collection, use, disclosure, copying, modification or disposal of personal information and provide details.
- Explain that the strata corporation's contracts with external contractors, such as a strata management company, will have contractual terms ensuring that the contractor shall also keep any personal information that it is provided in a secure fashion. The contract may

even have financial penalty clauses or a termination clause if the contractor is found to not have kept the records in a secure fashion or to have breached the strata corporation's privacy policy.

### **Correction of Personal Information**

- Explain that individuals may write to the strata corporation and ask it to correct any errors or omissions in their personal information that is under the control of the strata corporation.
- Explain that if the strata corporation is satisfied that an individual's request for correction is reasonable, the personal information will be corrected as soon as reasonably possible.
- Explain that the strata corporation will, as soon as reasonably possible, also send an individual's corrected personal information to each organization it was disclosed to during the year before the organization corrected it.
- Explain that if the strata corporation does not correct an individual's personal information, it will note the requested correction on copies of the personal information under its custody or control (i.e. the strata corporation will annotate its records).

### **Access Rights**

- Tell individuals they have the right to access their personal information under a strata corporation's custody or control, explain how to make a request, and confirm when they may expect a response.
- Explain that in some circumstances requests for information may be refused and that the reasons for its refusal and further steps that are available to the applicant will be provided in writing (including any internal review by the strata corporation and the right to ask the OIPC to review the decision).
- Give the contact information for the person who is responsible for the strata corporation's compliance with PIPA.
- Make clear that individuals not satisfied with the strata corporation's compliance with PIPA may complain to the OIPC.